

Supreme Court of the United States

OCTOBER TERM, 1917.

No.

LOUIS KRAMER AND MORRIS BECKER, PLAINTIFFS-
IN-ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK.

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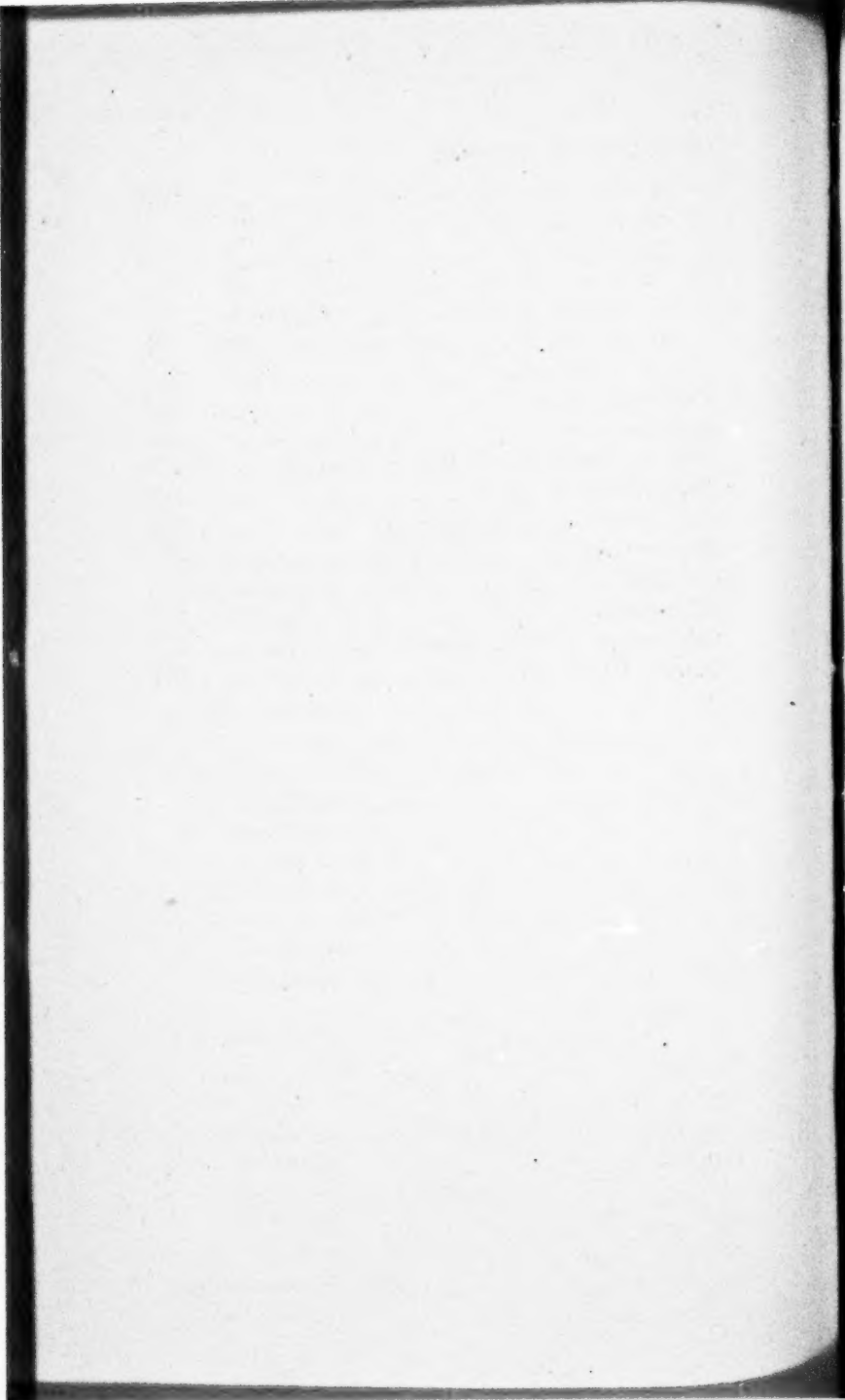
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Writ of Error and Order Allowing Same.

UNITED STATES OF AMERICA, ss.:

The President of the United States, To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between The United States of America, Plaintiff, and Louis Kramer and Morris Becker, defendants, a manifest error hath happened to the great damage of the said defendants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable Edward D. White, Chief Justice of the United States, the 19th day of July, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,
Clerk of the Supreme Court
of the United States.

(Seal)

KRAMER AND BECKER V. UNITED STATES.

Allowed by

LOUIS D. BRANDEIS,
*Associate Justice of the
Supreme Court of the United States.*

Indictment.

DISTRICT COURT OF THE UNITED STATES
OF AMERICA,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, begun and held in the City and County of New York, within and for the District aforesaid, on the first Tuesday of May in the year of our Lord one thousand nine hundred and seventeen, and continued by adjournment to and including the fourth day of June in the year of our Lord one thousand nine hundred and seventeen.

SOUTHERN DISTRICT OF NEW YORK, ss.:

The Grand Jurors of the United States of America, within and for the District aforesaid, on their oath present that on the eighteenth day of May in the year of our Lord one thousand nine hundred and seventeen, the President of the United States of America duly issued his Proclamation as provided by the Act of Congress approved May 18, 1917, entitled, "An Act to authorize the President to increase temporarily the Military Establishment of the United States," in which said Proclamation the President of the United States duly proclaimed and gave notice to all persons subject to registration in the several States and in the District of Columbia, in accordance with the said Act of Congress approved May 18, 1917, that the time and place of such registration shall be between 7

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A. M. and 7 P. M. on the fifth day of June in the year of our Lord one thousand nine hundred and seventeen, at the registration place in the precinct wherein they may have their permanent homes; that those who shall have attained their twenty-first birthday and who shall not have attained their thirty-first birthday on or before the day therein named are required to register, excepting only officers and enlisted men of the regular army, the navy, the Marine Corps, and the National Guard and Naval Militia, while in the service of the United States, and officers in the Officers' Reserve Corps, and enlisted men in the Enlisted Reserve Corps, while in active service;

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that Louis Kramer, Morris Becker, Joseph Walker and Louis Sternberg (hereinafter referred to as the defendants), all late of the City and County of New York, in the District aforesaid, heretofore, to wit, on the eighteenth day of May in the year of our Lord one thousand nine hundred and seventeen, and on each and every day thereafter up to and including the date of the filing of this indictment, at the Southern District of New York and within the jurisdiction of this Court, unlawfully, wilfully, knowingly and feloniously did conspire together and agree among themselves, and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the United States, that is to say: The said defendants unlawfully, wilfully, knowingly and feloniously did conspire together and agree among themselves, and with the said divers persons whose names are to the Grand Jurors unknown, to aid, abet, counsel, command, induce and procure divers persons whose names are to the Grand Jurors unknown, the same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration in accordance with regulations to be prescribed

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by the President, and upon proclamation by the President and other public notice given by him and by his direction stating the time and place of such registration, being under the duty as persons of the designated ages other than officers and enlisted men of the Regular Army, the Navy and the National Guard and Naval Militia, while in the service of the United States, to present themselves for and submit to registration under the provisions of the Act of Congress approved May 18, 1917, entitled, "An Act to authorize the President to increase temporarily the Military Establishment of the United States," unlawfully and wilfully to fail and refuse to present themselves for registration and to submit thereto, as provided by the aforementioned Act of Congress approved May 18, 1917;

And to effect the object of the said conspiracy, the defendant Louis Kramer, on the thirty-first day of May in the year of our Lord one thousand nine hundred and seventeen, at the Madison Square Garden, in the City and County of New York, in the Southern District of New York, did give to a person whose name is to the Grand Jurors unknown a leaflet entitled "No Conscription!" and ending with the paragraph:

"We consider this campaign of the utmost importance at the present time. Amid hateful cowardly silence, a powerful voice and an all-embracing love are necessary to make the living dead shiver.

NO-CONSCRIPTION LEAGUE,
20 East 125th St., New York."

and did request the said person whose name is to the Grand Jurors unknown, wilfully to fail and refuse to present himself for registration and to submit thereto, as provided by the Act of Congress approved May 18, 1917;

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And further to effect the object of the said conspiracy, the said defendant Louis Kramer, on the said thirty-first day of May in the year of our Lord one thousand nine hundred and seventeen, at the Madison Square Garden, in the City and County of New York, in the Southern District of New York, did give to one James J. Finan a leaflet entitled "No Conscription" and ending with the words "Mothers, Fathers, Sons—Turn Out in Protest against Conscription!"; and did request the said James J. Finan wilfully to fail and refuse to present himself for registration and to submit thereto, as provided by the Act of Congress approved May 18, 1917;

And further to effect the object of the said conspiracy, the defendant Morris Becker, on the said thirty-first day of May in the year of our Lord one thousand nine hundred and seventeen, at the Madison Square Garden, in the City and County of New York, in the Southern District of New York, did give to several persons whose names are to the Grand Jurors unknown, a leaflet entitled "No Conscription," and ending with the words "Mothers, Fathers, Sons—Turn Out in Protest against Conscription!";

And further to effect the object of the said conspiracy, the defendant Morris Becker, on the said thirty-first day of May in the year of our Lord one thousand nine hundred and seventeen, at the Madison Square Garden, in the City and County of New York, in the Southern District of New York, did have in his possession and under his control a collection of pamphlets entitled "No Conscription," and ending with the paragraph:

"We consider this campaign of the utmost importance at the present time. Amid hateful cowardly silence, a powerful voice and an all-embracing love are necessary to make the living dead shiver.

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NO-CONSCRIPTION LEAGUE,
20 East 125th St., New York."

and a collection of other pamphlets entitled "No-Conscription," and ending with the words "Mothers, Fathers, Sons—Turn Out in Protest Against Conscription!";

And further to effect the object of the said conspiracy, the defendant Joseph Walker, on the the said thirty-first day of May in the year of our Lord one thousand nine hundred and seventeen, at the Madison Square Garden, in the City and County of New York, in the Southern District of New York, did give to divers persons whose names are to the Grand Jurors unknown, a number of pamphlets entitled "No Conscription," and ending with the paragraph:

"We consider this campaign of the utmost importance at the present time. Amid hateful cowardly silence, a powerful voice and an all-embracing love are necessary to make the living dead shiver.

NO-CONSCRIPTION LEAGUE,
20 East 125th St., New York."

and a number of other pamphlets entitled "No-Conscription," and ending with the words "Mothers, Fathers, Sons—Turn Out in Protest Against Conscription!";

And further to effect the object of the said conspiracy, the defendant Joseph Walker, on the said thirty-first day of May in the year of our Lord one thousand nine hundred and seventeen, at the Madison Square Garden, in the City and County of New York, in the Southern District of New York, did have in his possession and under his control a collection of pamphlets entitled "No-Conscription," and ending with the paragraph:

"We consider this campaign of the utmost importance at the present time. Amid hate-

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ful cowardly silence, a powerful voice and an all-embracing love are necessary to make the living dead shiver.

NO-CONSCRIPTION LEAGUE,
20 East 125th St., New York."

and a collection of other pamphlets entitled "No-Conscription," and ending with the words "Mothers, Fathers, Sons—Turn Out in Protest Against Conscription!";

And further to effect the object of the said conspiracy, the defendant Louis Sternberg, on the said thirty-first day of May in the year of our Lord one thousand nine hundred and seventeen, at the Madison Square Garden, in the City and County of New York, in the Southern District of New York, did have in his possession and under his control a collection of pamphlets entitled "No Conscription," and ending with the paragraph:

"We consider this campaign of the utmost importance at the present time. Amid hateful cowardly silence, a powerful voice and an all-embracing love are necessary to make the living dead shiver.

NO-CONSCRIPTION LEAGUE,
20 East 125th St., New York."

and a collection of other pamphlets entitled "No-Conscription," and ending with the words "Mothers, Fathers, Sons—Turn Out in Protest Against Conscription!";

Against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in such case made and provided. (§§37 and 332 U. S. C. C., and §5 of the Act of May 18, 1917.)

FRANCIS G. CAFFEY,
U. S. Attorney.

KRAMER AND BECKER V. UNITED STATES.

(Endorsed) U. S. District Court, The United States of America vs. Louis Kramer, Morris Becker, Joseph Walker and Louis Sternberg. Indictment conspiring to induce persons not to register. Sections 37 and 332 U. S. C. C. and Section 5 of the Act of May 18, 1917. Francis G. Caffey, U. S. Attorney. A true bill. Frank B. Taylor, Foreman, filed June 4, 1917.

June 4, 1917, deft. Louis Kramer pleads not guilty. Bail \$10000. Deft. Morris Becker pleads not guilty. Bail \$10000. Deft. Joseph Walker pleads not guilty. Bail \$7500. Deft. Louis Sternberg pleads not guilty. Bail \$7500. Mayer, *D. J.* June 4, filed demurrer. June 6, demurrer overruled. Mayer, *D. J.* June 11, trial begun (defendants plead not guilty). June 12, trial concluded. Court directs a verdict of not guilty as to deft. Louis Sternberg. Verdict Louis Kramer and Morris Becker, Guilty, Joseph Walker, not guilty. Deft. Joseph Walker and L. Sternberg discharged. June 13th, defendant Louis Kramer sentenced to Two years U. S. Penitentiary, Atlanta, Ga., and to pay a fine of \$10000. Defendant Morris Becker sentenced to one year and eight months U. S. Penitentiary, Atlanta, Ga., Mayer, *D. J.*

KRAMER AND BECKER V. UNITED STATES.

Defendant's Bill of Exceptions.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Plaintiff,

against

LOUIS KRAMER, MORRIS BECKER,
JOSEPH WALKER and LOUIS
STERNBERG,

Defendants.

This cause came on for trial at the June, 1917, Term, before the Honorable Julius M. Mayer, Judge, and a jury, the United States (hereinafter called Government) being represented by Messrs. Francis G. Caffey, United States Attorney, and Harold A. Content, Assistant United States Attorney, and the defendants represented by Harry Weinberger, Esq., and thereupon the following proceedings were had and testimony given:

A jury was duly impaneled and sworn.

Mr. Weinberger: If your Honor please, I wanted to put on the record the various grounds for quashing the indictment on the grounds of the unconstitutionality of the law.

The Court: Yes.

Mr. Weinberger: First, on the ground that it violates Section 13 of the Amendments to the Constitution against involuntary servitude, in that servitude covers both service in the army and navy, and therefore involuntary servitude protection clause covers that particular thing.

That it violates Article I of the Amendments, Section 8—or rather Article I of the Amendments in reference to the combination of church and state, inasmuch as it gives to certain people—certain religious sects, privileges and exemptions that it does not give to all the other citizens, and therefore re-establishes a combination of church and state.

You see, under that same section it infringes the religious belief of the people of the United States by stating to them practically that the only way that they can get the protection of the law is by joining a particular church, and in that way putting forth a promise or a reward, to join that church.

It violates Section 8, Subdivisions 15 and 16 of that first section—Section 15 provides for the calling forth of the militia to execute the laws of the Union, and to suppress insurrection and repel invasion. We have at the present time no call for militia to execute the laws of the United States; nor have we any insurrection; nor are we invaded.

Furthermore, the Constitution provides, in Section 16, for organizing, arming and disciplining the militia, and for governing; the last part of that is important, coupled with an Act of Congress reserving to the States respectively the appointment of the officers and the authority of the training of the militia according to the discipline prescribed by Congress;

That the Conscription Law calls, therefore, for men of the State into the service of the United States, but it does not call on the Governor to provide militia.

My next point is that it violated Section 8, Article 12, in that the only power Congress has is: to raise and support armies. To raise and support armies and no appropriation of money to that use shall be for a longer term than two years; so that each two years the people shall have the right to vote whether to continue the Congress that raises a particular number of soldiers.

That at the present time Congress has appropriated money for a period of thirty years and therefore the entire support of the army being unconstitutional in that the money for the purposes of this Conscription Law is to get men who will be supported by the money paid in over a period of thirty years, therefore the entire Act is unconstitutional; the purpose of the Act being that each two years the people shall practically exercise the right of control, that standing armies shall not be supported for any term of more than two years until the people have a right to vote thereupon.

It violates Section 14, Subdivision 1, in reference to religion. It also violates Section 8—I have not the particular section here.

The Court: A mere reference to the section will be enough.

Mr. Weinberger: It violates that section in the Constitution which guarantees each defendant,—or rather guarantees to all the people throughout the United States the full protection of the law.

The Draft Law is applicable only to people between the ages of 21 and 30, and under that individuals may be drafted not only for military service, but also for agricultural or industrial service, and therefore makes a distinction of class; and furthermore, there is nothing in the Conscription Law which is limited to any period, and therefore under the present Conscription Law, the men between 21 and 30 years may be put into any service whether military, agricultural or industrial, for the rest of their lives and practically that means slavery.

Even in the Civil War, the draft, which was not passed upon by any court, was limited to two years.

Mr. Content: The Act is entitled, "To increase temporarily the military establishment."

Mr. Weinberger: There is nothing in the Act itself; that is the title; but the words are very clear that it means for a period of all time.

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And also that it violates the section of the Constitution which guarantees to the citizens equal rights.

This law gives special rights on the grounds of particular religious belief, and also gives special rights to men over the age of thirty inclusive, and under the age of twenty-one, and therefore makes class distinction, which is also in violation of law.

On all these grounds I move for a dismissal of the indictment.

The Court: Motion denied.

Mr. Weinberger: I respectfully except.

Mr. Content opened the case to the jury on behalf of the Government.

The Court: We will now take an adjournment until ten minutes past two.

Mr. Weinberger: I ask that the jury be kept together and that they be asked also not to read the newspapers or editorials in the daily papers on the trial.

The Court: Gentlemen, I don't propose to ask you to keep together. You have taken your oaths and you may do any proper and legal thing between now and the time that you return, that you may desire. I expect you, of course, to keep an open mind, and am confident that you will, and simply pass on this case as the evidence justifies; and I have sufficient confidence in you to let my instructions stop there.

Mr. Weinberger: I respectfully except, and I ask the Court to ask the jury then not to read editorials or comments on this trial as the case proceeds, so that they will not get outside argument, or any argument outside of the argument that counsel may make here before them.

The Court: It will probably conduce to your comfort, not to read any papers, if such there should be, which have comments on this case, but I do not

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propose to prevent you from reading any news articles. You are not to be influenced by anything that you do read, if you read any.

Mr. Weinberger: I respectfully except to both denials.

The Court: We will take a recess until ten minutes after two o'clock.

(RECESS UNTIL 2:10 P. M.)

AFTERNOON SESSION.

(2:10 P. M.)

JAMES J. FINAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are a member of the New York City police force? A. I am, sir.

Q. What is your rank? A. Detective-sergeant, first grade.

Q. Of what Branch Detective Bureau? A. Fourth Branch Detective Bureau.

Q. How long have you been a police officer? A. Ten years past.

Q. Mr. Finan, on the 31st day of May, 1917, did you attend a meeting in the Madison Square Garden? A. I did.

Q. And about what time of the day or night was it that you arrived at Madison Square Garden? A. I arrived at the Garden at about six-thirty p. m.

Q. Now I ask you to look at the four defendants, at this table, and state whether or not you saw any of those defendants on the 31st day of May, 1917, in the Madison Square Garden, in New York City? A. I did, sir; I saw the four there.

Q. You saw what? A. I saw the four defendants there.

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Q. Will you tell me about what time it was that your notice was first attracted to any of them? A. It was around 10:30 p. m.

Q. And to which one of the four defendants was your notice first attracted? A. To the defendant Kramer and the defendant Becker.

Q. Will you stand up, Kramer and Becker. (Two of the defendants stand up). Are those the two defendants you have reference to? A. Yes.

Q. As being the ones to whom your attention was first called?

The Court: Which is which?

The Witness: This is Kramer on this side with the glasses, and this is Becker standing up back of the counsel (indicating).

Q. Will you tell us in your own words, just what you observed at the time your notice was first attracted to the two defendants, those whom you have identified as defendants Kramer and Becker? A. Why, it was that they had a large bundle of circulars on their arm, or in their hand. Kramer had the wide one and defendant Becker had the small, or narrow one. When I first saw them, they were talking together.

Q. Who were talking together? A. Kramer and Becker. In a minute or two,—there were three or four of them—about three men I should judge came over and spoke to them; there was three or four, possibly five more men, and they then would take a bundle, small bundle like this (indicating), like this larger bundle, and they would hand it to the men, that is the bundle, and they would hand them—

Q. To the men and women? A. Men and women, and then they would ask Kramer or talk to Kramer and he would point with his hand to go around to the right or the left of the Garden, whichever way they wanted. Finally I saw him point downstairs

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to one man and hand a bundle to that man, and he left him and went downstairs.

Q. Could you hear any of the conversation between Kramer and Becker, and these other people?

A. No, I could not, I was not near enough to them.

Q. So what your testimony relates to is the gesticulating with the hands? A. Yes, just as they handed a bundle of pamphlets to them they motioned.

Q. Were they both together then? A. Both, Kramer had the larger ones and Becker the smaller ones.

Q. In point of size, you mean? A. Yes, sir.

Q. Tell us what happened after that? Will you look at the other two defendants, Walker and Sternberg, and state whether or not you saw them? A. I did, sir.

Q. And what were they doing? A. They were two of the men that they did—that Kramer and Becker had handed bundles to with directions to go out throughout the building, to different parts of the Garden, and deliver them.

Q. So that at the time that you saw this group of people around Kramer and Becker, you saw the others, that is, Walker and Sternberg, and some other five or six persons whose names you don't know, in there at the same time? A. Yes, sir.

Q. What part of the building was that in? A. In the second balcony.

Q. Second balcony? A. Yes, second from the top.

Q. Next to the top? A. Yes, sir.

Q. On what side of the house is that? A. The Madison Avenue side—Fourth Avenue, I should say.

Q. About what time was this, Mr. Finan? A. It was around ten-fifteen, between ten and ten-thirty, I don't know the exact time, I didn't take notice of that.

Q. It was about ten? A. After ten, before I first arrived.

Q. After these various people whom you described, received their bundles of leaflets, with di-

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rections with the hand where to go, will you tell us what happened? A. Why, Kramer started to give them out to citizens sitting there, and as he did I walked over and stood alongside of him. He turned around and handed me one.

Q. Before he handed you one, did you see him give any others out? A. Yes, he did give out five or six.

Q. Then you say he handed you one? A. Yes, sir.

Q. I show you a pamphlet, and ask you whether you have already identified that before the United States Commissioner (handing paper to witness)?

A. I have.

Q. Have you your initials on the back of it? A. Yes, sir, on the corner.

Q. Will you state what that is? A. Why, this is a "No Conscription" pamphlet.

Q. I don't mean that; where did you get it from?

A. I got this from Louis Kramer.

Q. Louis Kramer? A. Yes.

Mr. Content: I offer it in evidence.

Mr. Weinberger: No objection.

(Received in evidence as Government's Exhibit No. 1, and read to the jury.)

Q. Now, Mr. Finan, at the time you say that the defendant Kramer handed you Government's Exhibit No. 1, will you state whether you had any conversation with him? A. I did, sir.

Q. What was that conversation? A. When the defendant Kramer handed me that pamphlet I asked him what it was. He informed me it was some good advice for me. He then asked me if I was going to enroll and register next Tuesday, and I said I was. He said, "If you will take our advice, you will stay away from the polls, or the registration places." He said, "If everybody stays away there is not soldiers or police enough to make us go, but if some people go we will all have to go. If you stay away we will be right back of you" or words to that effect.

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Q. You were dressed in ordinary citizen's clothes, not in uniform then? A. Yes, sir.

Q. Is that the substance of the conversation between Kramer and yourself? A. Yes, sir.

Q. After that conversation what happened? A. Why, he left me, and then handed them out to other people, and he handed out one or two more when Sergeant Silverman of the 8th Coast Artillery, I believe, he is attached to, he came up and placed his hand on his shoulder and started to take him towards the stairway and Sergeant Silverman had another man with him.

Q. You mean another guardsman in uniform? A. Yes, and I walked over in back of them and as they got there Kramer started to struggle and make a fight. He still had these pamphlets in his hand, he turned to Silverman and said, "I have a lot of friends in the Garden, and if you don't turn me loose, we will start something and make a lot of trouble," or words to that effect, and then I stepped up—

Mr. Weinberger: May I put on the record, of course, at this time, that all this was subject to exclusion on the ground that it applies to only one of the defendants proper, as to the conspiracy of the four; but subject to the four being connected with that conversation or any statements between Kramer and this witness, it should not be taken as against them.

The Court: So far as it affects the other defendants, this is taken subject to being connected.

Mr. Content: I think, if your Honor please, there is some connection already in the case, I think they were shown to be agreeing together.

The Court: Yes.

Mr. Weinberger: I except of course—just as the Court pleases, if it is shown that the

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four were giving out pamphlets, any conversation between Kramer and this witness with reference to registering had nothing to do—the mere fact that he was there giving out pamphlets, assuming that they were there for that purpose, the mere fact that Kramer in addition told these men not to register, there is no proof of any conspiracy to tell them not to register.

The Court: We can only take the testimony step by step.

Mr. Weinberger: I merely wanted it on the record, so I can move later to strike it out.

The Court: Very well.

The Witness (continuing): I then stepped up to Sergeant Silverman—

Q. This was after Kramer, after you heard Kramer threaten to make trouble? A. To call his friends and make trouble. I then stepped up to Sergeant Silverman and told him I was—showed him my shield and told him—

Q. Was Kramer there when you told that to Silverman? A. Yes, sir.

Q. Go on then and state what you said. A. I told him I was a policeman from Headquarters and I requested the custody of the prisoner. I said I would take him downstairs as quietly as possible, so he would have no trouble started in the Garden.

Q. Did he turn Kramer over to you? A. He did. I then showed Kramer my shield and I said "Give me the pamphlets you got," or words to that effect, and he refused to give them to me and I then took them away from him.

Q. I show you a bundle of pamphlets and ask you if those are the pamphlets you took from Kramer (handing bundle to witness)? A. Yes, sir, they are.

Q. And you put his name on the back? A. On the back, "Louis Kramer."

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Q. And these are the same, this is the same bundle that was offered in evidence before the United States Commissioner on the preliminary hearing?

A. Yes, sir.

Q. At the same time I show you Government's Exhibit 2 before the United States Commissioner and ask you whether these were taken from the Kramer bundle (handing same to witness)? A. At the same time.

Q. That is, this is one of them? A. This is one of them.

Mr. Content: Now, if the Court please, I offer in evidence Government's Exhibit No. 2 before the Commissioner, as Government's Exhibit No. 2 on this trial; and I offer in evidence the balance of the bundle as Government's Exhibit No. 3.

(Marked Government's Exhibits Nos. 2 and 3 respectively.)

Q. Mr. Finan, this bundle that you took from Kramer comprised both types of the pamphlets, that is, each one of them? A. Yes.

Q. Well, Government's Exhibits 1 and 2, is that what you mean? A. Yes, Government's Exhibits 1 and 2.

Mr. Content: I will read Government's Exhibit No. 2 to the jury.

The Court: Read the pamphlet.

Exhibit 2 read to the jury.

Q. Now, Mr. Finan, you had gotten to the point where you had taken Government's Exhibit No. 3 from Kramer after he refused to give it to you, and one of the pamphlets in there being Exhibit 2 which was just read to the jury. Now after the arrest of Kramer and after you took the papers from him, will you tell us what happened next in the order of sequence? A. One of the other soldiers walked over

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with Walker, the last man away to the end (pointing).

Q. Will you stand up, Mr. Walker (defendant Walker stands up). A. And he brought him up and he had a bundle of pamphlets in his hand, and he said, "I just took these off this man who was there giving them out."

Q. This was said to you in the presence of Walker? A. Yes, and in the presence of Kramer.

Q. So the soldier who brought him over said these pamphlets he took from Mr. Walker? A. Yes.

Q. Did you immediately write the name on the pamphlets? A. I did.

Q. You did not physically take them from him? A. No, I did not.

Q. You merely wrote the name of Joseph Walker on the pamphlets that the soldier gave you? A. Yes, sir, and then, incidentally, I took my prisoner downstairs to the main floor, the Fourth Avenue side, the 26th street entrance. I said to Sergeant Silverman immediately when I got down there that there are seven or eight more people throughout the building who are giving these out and I informed him that I saw Kramer and Becker directing the people where to go after they had given them one of these smaller bundles.

Silverman said, "I will go back with the men and look for some more." Then four or five minutes later they brought down the other defendant over there, Sternberg, who is sitting behind Kramer. As Sternberg walked up he was about five feet from where I was, where I had the other two prisoners, and he said to Walker, "How much of the stuff did they find in your possession?" Walker said, "Why, they found all I had." And then he said, "They found all I had." Then Walker said to Sternberg, "How much did they get on you?" Or, "What did they get on you?" And Sternberg says, "All they got on me was some of the pamphlets." I then stepped aside to speak to a uniformed officer where

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I heard Walker and Sternberg conversing over there, but I didn't pay any attention to what they said at the time.

We then started for court. Just as they were getting ready to start, Sternberg—or Silverman, the Sergeant, said to Kramer, "Why don't you obey the Proclamation of the President, or try to?" "Oh," he said, "What do we care for the President. We all would be better off if the President was dead."

We then took them up to court.

Q. Now you took to the police court the defendants Kramer and Walker and who else? A. And Sternberg.

Q. The defendant Becker had not then been arrested? A. No, he had not, not to my knowledge.

Q. I mean he was not with the other three. A. No, he was not with us.

Q. Did anything take place at the Police Court? Did you have any conversation there? A. About ten or fifteen minutes after we got to the police court the defendant Becker was brought in by a uniformed officer. I immediately recognized him as one of the men who had been giving out the pamphlets originally, that is, with Kramer.

Q. You mean shortly after ten o'clock? A. Yes, sir. And he was the one, as I recollect it, that was told to go downstairs on the main floor of the Garden, or at least started towards the main floor. I then said to him, "I saw you when you were down in the Garden giving out pamphlets and circulating them throughout the building." And as I recollect it he said, "You didn't see me," or words to that effect. I then showed him the large pamphlets—

Q. Government's Exhibit 1? A. Government's Exhibit 1 marked, "Morris Becker, 1917," at the bottom, and I asked him if that was his name and he said it was. That was about the substance of the conversation.

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Q. Now at the station house did you take the names and ages and the pedigrees of the various defendants? A. Not in the station house, in the court.

Q. In the court, in the Magistrate's Court? A. Yes, sir. I asked him for his name, on the way to court, and everything, and he refused on the way up to court. But when I got to the court he did tell me that he was 22 years old, and he lived at 208 Second Avenue. He said his name was Louis Kramer.

Q. What about the defendant Walker? A. Why, Walker gave his age as 34, he said he was born in Russia, single, and was a painter.

Q. Walker said that? A. Yes, sir.

Q. Born in Russia? A. Yes, sir.

Q. Told you that at the police court? A. At the police court.

Q. How about the defendant Sternberg? A. Sternberg said he was 24, that is, he was 24 years old and he was born in Russia, and lived at 94—

Q. You may now proceed, you were just finishing Sternberg? A. Louis Sternberg, 24, Russia, single. He stated he was a hatter and lived at 94 Rutgers street.

Q. Have you told all the substance of your conversation with them, with the four defendants on the evening of the 31st of May, 1917? A. Yes, that is all I can recollect at the present moment.

Cross-examination by Mr. Weinberger.

Q. Officer, how long have you been connected with the Police Department of the City of New York? A. Ten years past.

Q. How old were you when you joined the Police force? A. Twenty-one—about twenty-one years, nine months.

Q. You are now exactly how old? A. I am thirty-one years and six months.

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Q. Where were you when—what part of the Garden were you assigned to, if any? A. Throughout the Garden.

Q. How many other detectives were in the Garden besides you? A. I could not exactly answer that; I don't know.

Q. Have you any idea? A. I have not.

Q. How many police officers were outside the Garden? A. A great many; I could not tell you.

Q. One hundred or more? A. I don't know. I should say about seventy-five.

Q. How many officers were in the lobby of the Garden as you went into the entrance? A. I didn't come by—you mean the main entrance?

Q. Yes. A. I did not go in the main entrance that night.

Q. How did you go in? A. In the back way, by the Fourth Avenue entrance.

Q. Was there any police officer there? A. No; that is, there was an inspector of police there, a couple of captains and three or four lieutenants that I saw.

Q. In uniform? A. Yes.

Q. How many officers in uniform were there in the house with you? A. I could not tell you that.

Q. How many did you see, about? A. Oh, I don't remember now. Throughout the entire Garden, do you mean?

Q. In uniform. A. Upstairs or down?

Q. On the ground floor and upstairs? First downstairs. A. What do you mean by downstairs?

Q. On the ground floor. A. The main floor?

Q. Yes. A. Why, I should judge there was probably two dozen; I could not be sure.

Q. Up in the balcony, how many officers in uniform were there, about, that you saw? A. None.

Q. In no part of the balcony? A. No.

Q. Did you see any other detective in that balcony at any time? A. I did.

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Q. How many, about? A. That I cannot tell you now; I kept walking throughout the Garden and met some of the same men four or five times as they were walking through.

Q. How many did you think you met in the balcony? A. Oh, I could not tell you, I have no idea.

Q. About what time did you first see these four men together, these four defendants? A. Around ten o'clock.

Q. Had the meeting already begun, and were they breaking up? A. No, oh, no.

Q. Where did you see them? A. Up in the balcony.

Q. You are sure that the defendant Becker was up there with the other three defendants in the balcony? A. Positively.

Q. Your recollection of that is positive? A. Yes, sir.

Q. At that time did Becker have his pamphlets with him? A. He had some pamphlets, yes, sir, I don't know whether they were his, or whose they were.

Q. A bundle of pamphlets that you offered in evidence? A. He did.

Q. And you saw Kramer with him at the time? A. Yes, sir.

Q. When you saw Sternberg and Walker, did they have any pamphlets? A. Not when I first saw them; no, sir.

Q. After they got the pamphlets from Becker and Kramer? A. Yes, sir.

Q. Then what did you see Becker do, where did he go? A. Why he went downstairs.

Q. About what time? A. Around ten o'clock, quarter after.

Q. Did you see him distribute pamphlets there on the balcony? A. No, I did not.

Q. Or any of the other men at all? A. Yes, to the other men I did, yes, that is, they were distrib-

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uting the bundles, I didn't see them distribute any singles.

Q. How many bundles were there, how big a bundle? A. Why, he had a large bundle on his hands, and he took off some from each bundle and handed them out to the others.

Q. Did you see those pamphlets? A. No, I did not, not at that time.

Q. Did you know what they were? A. Well, what I have seen since, yes.

Q. I mean at that time did you know what they were? A. No, I did not.

Q. You say that after Becker gave the pamphlets to Sternberg and Walker, he went out? A. Yes, sir.

Q. Carrying the bundle? A. Yes, sir.

Q. And that is the last you saw of him until he was arrested? A. Yes, sir.

Q. What did Sternberg and Walker do after they got their bundles? A. Why, Sternberg left first and went over towards the Madison Avenue side, walked around the balcony towards the Madison Avenue side, and Walker started to give them out.

Q. Did you arrest Sternberg? A. I did not.

Q. You heard some of the officers testify before the Commissioner, didn't you? A. I did, sir.

Q. You heard them state that Sternberg was arrested with the pamphlets in his pocket and he was not giving them out? A. No, I don't recall hearing that.

Q. You were in the Commissioner's room at all times? A. I was.

Q. When Kramer asked you whether you were going to register and he then told you not to register, why didn't you place him under arrest? When he said that to you? A. Well, I was not sure that there had been a violation of law.

Q. You were not sure at that time that if a man told you not to register, that was a violation of law? A. I was not.

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Q. Then at one part you were or you were not?
A. Well, I was undecided.

Q. Had you attended any other Conscription meetings? A. I had—no, this was the first one I had been to.

Q. Had you attended any other meetings against the Conscription, protesting against the Conscription? A. Since then do you mean?

Q. No, before then. A. That was the first one.

Q. Are you personally assigned to these cases?
A. I am not.

Q. Were you at that time? A. I was assigned to the Garden on police duty.

Q. Only in reference to police duty? A. That is all, or to make an investigation if I saw any violation of law.

Q. Violation of what law? A. Of any law.

Q. Was there any specific instruction given to you about registration law? A. There was not.

Q. Has there been any instruction to the police of the City of New York in reference to No-Conscription meetings, or registration meetings? A. At that time?

Q. Yes. A. There had not.

Q. There had been quite a few meetings, for instance, at Harlem River Casino against this conscription? A. I was not there, so I don't know anything about it.

Q. You read the papers about it, didn't you?

The Court: That is immaterial.

Mr. Content: I hate to object, but it is immaterial.

Mr. Weinberger: It is material to find out whether this man knew or didn't know that when he alleges that Kramer told him not to register, whether it is true at that time he said he didn't know whether it was a violation of law.

The Court: He is not a lawyer, he is a policeman.

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Mr. Weinberger: Policemen sometimes think they know more than the lawyers.

The Court: We are not discussing that.

Mr. Weinberger: The point I want to make is this:—

The Court: Objection sustained. Next question.

Mr. Weinberger: I respectfully except.

The Court: Very good.

Q. What particular precinct are you attached to? A. The Fourth Branch Detective Bureau.

Q. Have you been attending any meetings on the street at any time within the last year? A. I have not.

Q. Have you gone to any meetings during the present year when the questions of war and peace were discussed? A. I have not.

Q. Have you been under any instructions at all in reference to looking for violations of the anti-conscription or anti-registration law? A. I had not any instructions previous to this meeting.

Q. When Sergeant Silverman arrested Kramer, did he tell you what he arrested him for? A. At that time? Upstairs or downstairs?

Q. Yes, upstairs. A. No, sir, when he started the commotion I didn't ask him what he arrested him for, I simply asked him for the custody of the prisoner, when the prisoner said he would call his friends and create trouble.

Q. Then you asked for his custody? A. Yes, sir.

Q. And that was where, in what part of the Garden at that time? A. That was up on the second balcony, or the balcony next to the roof.

Q. What time did you take them over and make them your prisoners? A. About a quarter after ten.

Q. Where did you, I mean? A. I just told you that, on the balcony, next to the top.

Q. In other words, the struggle had begun up there? A. That is right.

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Q. And you took him downstairs? A. I did, sir.

Q. Did you see Becker anywhere at that time? A. When he was arrested?

Mr. Content: No, at that time.

The Witness: At that time no; I seen him previous, not at that time.

Q. Did you see Sternberg? A. I did not.

Q. At that time or Walker? A. I did.

Q. Where was Walker? A. About twenty feet away from Kramer.

Q. Doing what? A. Handing out pamphlets.

Q. You were watching them both handing out pamphlets? A. Kramer more than Walker, because he had been giving instructions to the others and he seemed to be the boss of the crowd.

Q. And you watched the Sergeant arrest him? A. Kramer? Yes.

Q. Where were you when Kramer was supposed to have asked you about not registering, what were you doing? A. I was standing up in the balcony there.

Q. Were there a lot of people standing up? A. There was.

Q. How many besides yourself? A. Oh, a number of them.

Q. How many? A. They were standing up all over the Garden.

Q. How did Kramer come through the crowd to reach you? A. Why, I was in the back, he didn't have to go through the crowd.

Q. He came along, you say, handing out these pamphlets? A. Yes, sir.

Q. Which one? A. The large one, Exhibit No. 1.

Q. Exhibit No. 1. He didn't have Exhibit No. 2? A. He did not have it?

Q. Yes. A. Yes, he did, he had them in that bundle; I did not see him handing any of them out.

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Q. Did he talk to anybody besides yourself? A. He did.

Q. Whom? A. Two or three other citizens there.

Q. You don't know what he said to them? A. No, I do not.

Q. Did you hear what he said? A. No.

Q. When you came along there, and he handed a man a pamphlet did he speak with each man that he—did he stop to talk to each man that he handed a pamphlet to? A. Why, no, sir; he would hand out three or four and then say something, and then walk down to the next three or four.

Q. When he handed it to you, and you asked him about it, where were you? Were you the only one, or did he hand to three or four others at the same time? A. He did not, he handed out some, I don't remember whether two or three or four.

Q. And directed his conversation specifically to you? A. Yes, because I spoke to him; I asked him what this was he was giving me, and he said "That is good advice to you."

Q. Is there any advice on People's Exhibit 1? A. I am telling you his remark.

Q. Did you look at it before you asked him what was this? A. I did not.

Q. Did you know at all that this was a meeting—an advertisement for another conscription, a no-conscription mass meeting? A. No, I didn't know it at that time, until I looked at it afterwards.

Q. You mean to say you asked him what was that, and he said "That is good advice," and then after all that you knew it was an advertisement for a No-Conscription meeting? A. That was not all, he said more than that, counsellor.

Q. What else did he say? A. When I asked him what it was, he said it was good advice. He then asked me if I was going to enroll Tuesday, or register, and I said, yes, I was. He said, Well, if you take our advice—my or our, I am not sure whether he used "my" or "our"—if you take our advice,

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why you won't enroll or you won't register. He said if everybody stayed away from the polls there is not soldiers or policemen enough to make us go, but if some of us go we will all have to go.

Q. He made that big speech to you, did he? A. He made that big speech, as you call it, yes.

Q. Knowing that policemen were all around and soldiers were pretty close around him, too? A. I don't know what he knew; I cannot testify to what he knew.

Q. Were there soldiers in that balcony? A. There was not any when I spoke to him first.

Q. How long did he speak to you before the soldiers followed you in and made the arrest? A. That is, if they were there I did not see them, that is, where this was, that was in the balcony, and there were men all around, people there, and they may have been right in back of me for that matter and I did not see them.

Q. How long before the soldiers placed him under arrest did he talk to you? A. It was not a long period of time after that the soldiers placed him under arrest, it was not even——

Q. How long was it? A. Why, two or three or four minutes.

Q. That is all? A. Yes.

Q. They must have been right within the vicinity of where you and Kramer were? A. They must have been, but I did not see them.

Q. Did Kramer make this statement to you in a quiet voice? A. No, he spoke right up, loud enough so that people within three or four or five feet could hear it.

Q. Have you been reading the proclamation that the District Attorney has been talking about, of the President? A. I have not.

Q. Have you been reading any of the statements in the papers about conscription? A. I have.

Q. Or anti-conscription registration meetings? A. I have.

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Q. Or anti-conscription meetings? A. I have read some of the statements in the papers, yes.

Q. Did you read any of the editorials in any of the New York papers stating that it was a violation of law? A. Well, now, do you mean previous to this meeting or since then?

Q. Yes, previous to that meeting? A. No, I did not; but I have read a whole lot since then.

Q. Do you read the papers every day? A. I do read the papers every day.

Q. Don't you see almost every day in the papers——

Mr. Content: Previous to this night?

Q. Previous to this night, yes. A. No, I was——

Q. You did read articles on conscription, or why people should register?

Mr. Content: He already answered about three times he did not.

The Court: I do not see what that has to do with this.

Mr. Weinberger: I propose here, whether or not Kramer told him not to register,—I propose here to find out why he did not put him under arrest.

The Court: Objection sustained.

Mr. Weinberger: I respectfully except.

Q. At no time in the Garden did you hear anyone else state, "Don't register"? A. No.

Q. And at no time did you hear Becker tell anyone, "Don't register," at any time during the course of that meeting? A. No, sir.

Q. You did not hear Walker say so? A. No, sir.

Q. And you did not hear Sternberg say so? A. No, sir.

Q. The only man was Kramer and he spoke to you out of fifteen thousand people in Madison Square Garden?

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Mr. Content: The witness testified that he spoke to others, too, I do not see why you should put your question as one out of fifteen thousand.

Mr. Weinberger: He picked him out.

The Witness: Oh, no. I testified that he spoke to me and to other people.

Q. You don't know what he said? A. No, I do not, I was not near enough to hear what he may have said.

Q. What other soldiers did you see there besides Sergeant Silverman in the balcony? A. Oh, there was two or three others; I don't remember their names. There was one sailor—two sailors.

Q. How many soldiers arrested Kramer? A. Why, Sergeant Silverman and another man.

Q. Were you entirely alone up there, or was there a crowd around him? A. Why not at that time, but they did come up a few minutes later.

Q. Before you took the prisoner over? A. No, when they—when Walker was brought over, then I noticed another one and possibly two more.

Q. Did you take Kramer over before Walker was brought over or afterwards? A. About two or three minutes after. Kramer was taken first and then Walker afterwards.

Q. I am referring to you now, talking of Kramer? A. That is what I say; first they took Kramer and then in two or three minutes after they had taken Walker.

Q. Then Sergeant Silverman and one other man went around and took some more prisoners? A. Not together, as I knew.

Q. You did not see the others that were all before the Commissioner, the soldiers? A. No.

Q. Coming back to the statement that you claim Kramer made to you about not registering: When you went to the Garden did you know that this was a meeting to discuss peace terms and democ-

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racy? A. When I went to the Garden I did not know what it was I was to do, but I was to report to Inspector Cray, of the Second Branch Detective Bureau, and I reported to him and he assigned me to the Garden; I didn't know what was going on there at all.

Q. In other words, no one told you what was going on? A. I did not ask.

Q. When you got there did you see any of their circulars handed out? A. As soon as I came there, there were some circulars out on the outside of the building being distributed.

Q. What was it that they said, something about a peace meeting? A. Something about a peace meeting.

Q. And did you see any circulars being given outside or inside the meeting other than People's Exhibits 1 and 2? A. No, I did not.

Q. Isn't it a fact that they did not allow any circulars to be given out at this meeting?

Mr. Content: He has just answered and said that they were not.

Mr. Weinberger: That they were only being given out.

The Court: He can only testify to what he saw.

Q. Isn't it a fact, there were no circulars being given out at this meeting? A. Why, these circulars were given out.

Q. Other than these circulars? A. Not to my knowledge. I said I did not see them. There might have been a lot of things happen there that I would not see, in Madison Square Garden.

Redirect examination by Mr. Content.

Q. You simply went there in pursuance of your orders? A. I was simply obeying orders.

Q. To see that the law was not violated so far as you knew it? A. So far as I knew it, yes, sir.

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BENJAMIN SILVERMAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Your full name is Benjamin Silverman? A. Yes, sir.

Q. You are attached to the 8th Coast Defense Command, United States National Guard? A. Yes, sir.

Q. On the 31st day of May, 1917, did you attend the meeting on peace aims and democracy or some name of that sort in Madison Square Garden in New York City? A. I did.

Q. Did you see the four defendants sitting at this table, other than Mr. Weinberger, and the two deputy marshals (indicating). A. Yes, sir.

Q. Did you see any of these men at the Madison Square Garden? A. I seen Walker and Kramer at the meeting and Sternberg I seen downstairs.

Q. Downstairs? I mean downstairs there? A. I am sure I met the two defendants, that is these two defendants.

Q. Kramer and Walker? A. Yes, sir.

Q. To which one of those two was your attention first attracted? A. I don't know his name, whether Kramer or Walker, but the defendant there with the glasses.

Q. Kramer, stand up. (Defendant Kramer stands up.) A. That is the man.

Q. That is Kramer? A. Yes.

Q. That is the one you found there? A. Yes, sir.

Q. About what time of the evening was this? A. About five or ten minutes after ten.

Q. What was Kramer doing at the time you first noticed him? A. I observed him for about—for a few minutes I observed him talking to civilians in the building, and he was handing out circulars, a large circular and small one, and he was also talking to them at the same time.

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Q. By large circulars do you mean circulars of the type of Government's Exhibit No. 1 (handing paper to witness)? A. Yes, sir, that is it.

Q. And by small one you mean circulars of the type of Government's Exhibit No. 2 (handing paper to witness)? A. Yes, sir.

By the Court.

Q. Kramer was handing out circulars like these two exhibits? A. Yes.

Q. Around the building? A. Yes, sir.

Q. You saw him? A. Yes, sir, I did.

By Mr. Content.

Q. For example, suppose an ordinary civilian came along, did he hand him one of each kind of circular? A. Why, he was giving them out singly, and he was handing them out in twos, as the people came along, he did not hand them to everybody, but he was handing them out one and sometimes two and then he would make some remark.

Q. In some cases he would give them two, that is, both kinds? A. Yes.

Q. In other cases only one? A. Yes.

Q. Did you hear him talk to any of these people in civilian clothes? A. Not just then.

Q. Did you hear him later? A. Yes, sir, I did, sir.

Q. How much later? A. About five minutes I should say I walked over closer, just about three feet, and he was giving this smaller circular away.

Q. Exhibit No. 2? A. Exhibit No. 2, to some fellow, and he told him that if he read this carefully there would be some good advice to him about registering on Tuesday; and he then stated to this civilian, that if he would not go along and register, it would be a help to the cause, and if there was any trouble the society or organization which he belonged to, would be of assistance to him, and he showed them the address where to communicate in case of trouble.

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Q. The address given on the bottom of Government's Exhibit 2? A. Yes, sir. I then walked over and placed him under arrest.

Q. Where were you standing during the time that he talked to this civilian? A. About two or three feet to the rear of him.

Q. You don't know who that man was? A. No, sir, I do not.

Q. You were standing at the rear of Kramer? A. Yes.

Q. You heard him say to this man,—urge him not to register Tuesday, in the words you have given to the jury? A. Yes, sir.

Q. You could hear the conversation? A. I could, sir.

Q. Was it loud? A. Loud enough so I could hear it.

Q. So that after your hearing that, you placed him under arrest? A. That I did, sir.

Q. After you arrested him, I mean after you placed your hand on his shoulder, or whatever you did, what did you do?

The Court: Becker or Kramer?

Mr. Content: I meant Kramer.

A. He started to struggle to get away from me and he said that "if I call my friends, you won't be able to take me out as easy as that," or some words to that effect. That is, "if I call my friends there will be trouble," and with that the police detective that just was here—

Q. Finan? A. Yes, sir, he came over and showed his shield to me, and requested the custody of the prisoner, and to avoid trouble I then turned the prisoner over to him.

Q. At this time did Kramer have left in his possession any of the bundle of pamphlets or leaflets that you saw him in the act of distributing? A. Yes, he still had them in his possession.

Q. He still had them? A. Yes.

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Q. Did you ask him for them? A. Not then, sir.

Q. Later? A. Later.

Q. And when you turned the prisoner over to Finan, did you ask him for them? A. No, sir, I did not.

Q. Did Finan ask him for them in your presence?

A. That I cannot recall, whether yes or no.

Q. You did not take Government's Exhibit 3, the bundle of pamphlets, from Kramer yourself? A. No, sir, I did not.

Q. Detective Finan did? A. Yes, sir.

Q. After you turned Kramer over to Finan,—at that time where were you, in what place in the building or in the balcony? A. On the 26th street side of Madison Square Garden, one balcony from the top.

Q. After you turned Kramer over to the custody of Detective-Sergeant Finan, what happened then?

A. Another person went through there, Mr. Walker, giving out pamphlets.

Q. Was this the man you refer to (indicating one of the defendants)? A. He just was giving out these circulars, about twenty or thirty feet to the left.

Q. On the same balcony? A. On the same balcony, yes, sir, and I seen—

By the Court.

Q. Excuse me. When you say these circulars, you mean both sets, the Exhibits 1 and 2? A. Yes, sir, both of them.

By Mr. Content.

Q. Both kinds, the smaller and the larger? A. Yes, sir.

Q. Go ahead. A. I then sent Private Henry of the 69th Infantry, I sent him over to get that prisoner, to get Walker, and as Henry was approaching Walker, Walker tried to throw away the pamphlets.

Q. Were they recovered? A. They were, sir.

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Q. By whom? A. By Henry.

Q. In your presence? A. Yes, sir.

By the Court.

Q. Henry was in uniform? A. Yes, sir, full uniform.

By Mr. Content.

Q. Henry was in uniform too? A. Yes, sir.

Q. In other words, who reached Walker first, Henry or yourself? A. Henry.

Q. I show you a bundle of pamphlets, which were offered in evidence before the United States Commissioner, and marked "Joseph Walker," and I ask you whether or not these are the pamphlets that you saw Walker trying to pass and throw away, and that were recovered by Henry (handing to witness)? A. Yes, sir, these are the ones; yes, sir.

Mr. Content: I offer these in evidence as Government's Exhibit No. 4.

(Marked Government's Exhibit No. 4.)

Q. Now do these comprise both types of pamphlets? A. They do, sir.

Q. That is, the same as the jury has already examined, Exhibits 1 and 2? A. Yes, sir.

Q. After Walker was arrested, by Henry, did you come up? A. I walked over to Henry and we took the prisoner there and turned him over to Detective Finan.

Q. Turned him over to Finan, too? A. Yes, sir.

Q. Then what happened? A. Why, I then went through the building as Detective Finan told me there were five or six others going around in the building, and giving out these circulars. I went through the building, and we then arrested a woman and brought her downstairs, and when I got downstairs I noticed Sternberg.

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Q. Now just a minute. This is the woman that was subsequently discharged on the consent of the Government? A. Yes. And I then noticed Sternberg, the little man over here (indicating), in custody with the rest of the prisoners.

Q. You had nothing to do with his arrest? A. No, sir.

Q. In other words, the only arrest that you physically witnessed was the arrest of Kramer, made by yourself? A. Yes, sir.

Q. And the arrest of Walker made by Henry, when you yourself were but a few feet away, is that right? A. Yes, sir.

Q. You noticed Sternberg then added to the group, so there were then at this time three prisoners? A. Yes, sir.

Q. And was Detective Finan with them? A. He was, sir.

Q. Then what happened? A. I was waiting for the rest of the men to come down, that is, the men who were on my detail; and while standing there I heard Sternberg say to Walker in broken English, "How much of the stuff did they get on you?" And Walker replied, "They got all I had." Walker then said to Sternberg, "How much of the stuff did they get on you?" "Why," he says, "All I had left," or some words to that effect.

And a little while later, Sternberg said to Walker, he said, "Did they overhear the conversation of you instructing others not to register on Tuesday?" So he said, "I guess they did." He says, "There was detectives all over the house, they must have overheard us." I then done a very foolish thing, I told them anything that he would say would be used against him, otherwise I would probably have heard some more.

Q. Did anyone say anything to you after that for telling them that? A. I got a call from the detective.

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Q. The detective sergeant told you not to say that? A. Yes.

Q. After you heard this conversation between Walker and Sternberg, in which Sternberg stated, or in which he admitted that they had gotten the most of his bundle and also the fact that the detective must have heard, and all that, and so forth, what happened then? A. As we were marching the prisoners out of the building——

Q. You took the three of them together. A. Why, I had Kramer in custody.

Q. You had Kramer? A. Yes, sir. And as I was walking through the streets with them, I said, "You all ought to be ashamed of yourselves. Have you read the President's proclamation?" And he says to me——

Mr. Weinberger: I object to the testimony as already given by this officer and as to what he said while he was already under arrest, and move that it be stricken out, and I object to the statement as incompetent, irrelevant and immaterial, and no proof as far as the conspiracy is concerned, and it is simply and merely made to prejudice this jury against these defendants.

By the Court.

Q. Did he say anything to you about registration, or anything of that sort? A. I did overhear him say that to others, not to me.

Q. I mean when you were walking away, while you were speaking about the President's proclamation? A. No, sir, he did not.

Mr. Content: This conversation, your Honor, goes to the intent of the defendants, and I ask that it be received, for that purpose. In other words, this witness started the conversation and asked him why he did not obey the President's proclamation——

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The Court: I will allow it.

Mr. Weinberger: He intends to bring out some evidence which ought not to be allowed, not what they thought of the President's proclamation. Whether they said it or not, the fact is that it is brought in here purposely to prejudice this jury against these defendants.

Mr. Content: If he is going to make these remarks, he will have to be accountable for them.

Mr. Weinberger: He will be accountable, but not for any statements which are made simply and solely for the purpose of prejudicing this jury.

The Court: I will take the conversation if it was between the defendants and this man.

Mr. Weinberger: We respectfully except.

Q. You stated, Mr. Silverman, that you asked him why he did not live up to the President's proclamation, or something to that effect? A. Yes.

Q. What reply did he make? A. He said, "To hell with the President; we all would be better off if the President was dead."

Mr. Weinberger: I move to strike that out and ask that the jury be instructed to disregard it, and as having no relation whatsoever as far as the conspiracy charge here is concerned, and made merely for the purpose of prejudicing the rights of these other defendants here.

Mr. Content: It is only admissible as against Kramer.

Mr. Weinberger: It is not admissible even against Kramer. Kramer is not being charged with that remark, he is being tried here for conspiracy.

The Court: I will grant your motion as to all the other defendants, but only as to the

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defendant Kramer do I allow it, and I will give you an exception.

Mr. Weinberger: And I respectfully except.

Q. Now, Mr. Silverman, they finally were all brought over to the police station? A. Yes, sir.

Q. To the Magistrates' Court? A. Yes, sir.

Cross-examination by Mr. Weinberger.

Q. Silverman, how did you happen to go up to this meeting? A. General rumor, sir, which was passed along, that there was to be a meeting there, and I went there to investigate.

Q. There were some special orders to go to the meeting? A. Why, I simply knew that there was to be a meeting from a circular that I got in Forty-second street, and I went there in response to that circular.

Q. You say you got what kind of a circular, one of the circulars in evidence here? A. No, sir, it is a circular showing that there was to be a peace mass meeting at Madison Square Garden on this evening.

Q. And you thought it was a good place to go after reading that? A. At a public meeting, yes, sir.

Q. What is your particular occupation? A. I am in the recruiting work, looking for new soldiers.

Q. Are you in the recruiting division of the army? A. I am detailed through the National Guard Headquarters for recruiting purposes.

Q. To do what? A. To recruit, sir.

Q. What are your duties, to get recruits? A. Go around to these different meetings, or go around—why, our station is up at 42nd street and Fifth avenue, and we have a detail going around the City, and we generally get out on the street corner, and we talk, and then after talking we make a request for recruits.

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Q. You thought that you would have a chance to talk at the Madison Square Garden meeting? A. I thought that I might get a few recruits down there, sir.

Q. Did you think you would have a chance to make any speech there? A. No, sir, that is not my purpose.

Q. What time did you get this circular? A. The circular I got, that circular, a day or two previous to the meeting.

Q. Who else besides yourself went to the meeting? A. A sailor, Mr. Bevins.

Q. Where did you get him? A. He is detailed at the same station, 42nd street and Fifth avenue.

Q. Where did you start from? A. Why, I started from home, sir.

Q. Where did he start from? A. He must have started from home too, I don't know where he did start from.

Q. Did you arrange with him to meet you at the meeting? A. To meet me outside of the Garden, sir.

Q. Where? A. On the Madison Avenue side.

Q. When did you make that arrangement? A. In the afternoon.

Q. Did any superior officer give you orders to go to that meeting? A. Yes, sir.

Q. Mr. Silverman, you said that you heard the defendant Kramer say that they have good advice about—that the circular has good advice about registration on Tuesday, and that if the individual he was talking to, if he would not register, he would help the cause and a society would be of assistance to him, and he showed the address where they could call for help, is that true? A. Yes, sir.

Q. And this testimony—and that is the best recollection you have as to registering—I should say the best recollection you have as to what Kramer said at that time? A. One statement you have just

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made about saying about not registering on Tuesday, he did not say it was on that circular.

Q. Where on the circular does it say—

Mr. Content: He just said he did not say it was on the circular.

Q. No, but you say you heard Kramer tell people not to register, and it would be good advice not to register on Tuesday, and that if he would not register he would help the cause, and the society would be of assistance to him and showed the address on that circular where they could help? A. The society would be of assistance to him if they would get into trouble.

Q. Before the Commissioner you say as follows: "I stood behind him for awhile, and I overheard him say to one young man, 'Are you going to enroll next Tuesday?' and the young man—I don't know whether the young man said 'Yes' or 'No,' but at any rate he said, I suppose meaning Kramer, 'Well, the authorities cannot do anything to you if you do not, the law is unconstitutional, and if you get in trouble,' he says, 'they cannot do anything to you, we will be behind you.' " You do not say anything at all about registering, you merely quote that they should not enroll, and then you go on to say, "Are you going to enroll on June 5th," and by the motion of the mouth he said yes, but you could not hear the motion but you heard Kramer say, "well, now, the authorities themselves cannot do anything to you, the law is unconstitutional, if you refuse to register we will stand behind you." You do not say anything at that time about the address being right there, and that they would stand behind them. A. May I ask a question, sir? Will you look at that and see whether that is my statement or Detective Finan's statement to the Commissioner?

The Court: What page are you reading from?

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Mr. Weinberger: I am reading from page 21 of the minutes.

Mr. Content: "Are you going to enroll next Tuesday," used the word "register" instead of "enroll."

Mr. Weinberger: And I read from page 29 of his testimony. Nothing is said about there is an address on there, and you can call for assistance; there is nothing in the testimony about calling for assistance. The story grows as it is told.

The Witness: This is here a trial, and the other was merely preliminary.

Q. I didn't ask you for any explanation.

Mr. Content: Yes you did, you just asked——

Mr. Weinberger: I am not arguing with you, Mr. Content.

By the Court.

Q. You answered the last question as it was put to you? A. Yes, sir, I did.

Q. And you answered such questions as were put to you in that hearing? A. Yes, sir, I did.

Q. And to-day you have answered such questions as were put to you? A. Yes, sir, I did.

By Mr. Weinberger.

Q. You were asked to give the entire conversation, weren't you, before the Commissioner? A. I don't recall, sir.

The Court: Call his attention to the question and the answer.

Q. "Will you tell us, dealing particularly (page 20) with the defendant Kramer, just what happened and what was said from the time your attention was first attracted to Kramer?" And then he goes on

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that he came in at the 26th street entrance and that there he met Kramer and he saw papers, and then you give this testimony as you give it here: "Are you going to enroll next Tuesday?" and he said, "The law is unconstitutional," and then, "If you go in there," he says, "they cannot do anything to you" he says, "We will be behind you."

The Court: Is that in substance correct?

The Witness: That is in substance what I have just said.

Q. Did you place him under arrest immediately?

A. I did, sir.

Q. And where was this Detective Finan at this time, Detective Finan? A. I could not say, sir, I do not know, and I didn't know the gentleman before he showed his authority to me, showed his credentials.

Q. Did you know there were detectives all over the building? A. Why, from general understanding I knew it, but I would not know them.

Q. Did you know there were police all over the building? A. Yes, sir.

Q. You did not call an officer or anyone else to arrest Kramer? A. I had authority to make arrests myself.

Q. I didn't ask you whether you had authority, I asked you whether you called a policeman or a detective who might happen to be in there to make the arrest? A. No, sir.

Q. You placed him under arrest? A. Yes, sir.

Q. Who was with you? A. Private Moroney.

Q. You took the defendant, one of the defendants, in custody? A. And I turned him over to Detective Finan.

Q. Did you go to the police station? A. I did not go to the police station.

Q. Did Detective Finan tell you at that time that he had also heard Kramer state "Don't register"? A. No, sir.

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Q. Or don't enroll? A. No, sir.

Q. At any time that night did he tell you that he heard Kramer state, "Don't register"? A. I don't remember, sir.

Q. Did you get the names of any of the men that Kramer told, "Don't register," or "Don't enroll"? A. No, sir.

Q. How many people did you see Kramer talk to? A. I observed him talk to about five or six.

Q. Did you hear him, that is, hear any of the conversation with the five or six? A. I only heard one conversation, sir.

Q. Did you get the name of the man you heard him talk to? A. In the commotion he got away, sir.

Q. Where were the other soldiers? A. Why, there was two more with me.

Q. Before you arrested the defendant Kramer, how many soldiers did you get under your control or under your orders? A. Ten or twelve, sir.

Q. Why did they place themselves under your orders? A. I am the senior acting sergeant in charge of the Mayor's recruiting station at 42nd street, and I happened to be the senior ranking sergeant present in the Madison Square Garden.

Q. Before you knew there was anything going on that you believed illegal in Madison Square Garden, you had these men put under your control?

Mr. Content: He just specified he went there for recruiting purposes.

The Court: He may answer.

A. What is the question?

Q. (Question read.) A. They were under my control, sir, in the Garden.

Q. Where did you made it up, that you would all—that you were all going to meet when you were only going to this peace meeting at the Madison Square Garden? A. Men going into a meeting of

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that sort, they are on recruiting duty, and they report to the nearest non-commissioned officer.

Q. Well, were all these other men on recruiting duty? A. Yes, sir.

Q. All the men that were in the Commissioner's office? A. Men out in uniform today are all on recruiting duty, sir.

Q. Are they specially assigned to that, or merely supposed to go somewhere and do some of it if they can? A. They are assigned to it.

Q. Then the men are assigned to it? A. All men in uniform.

Q. On this day when you went to Madison Square Garden, you only went there to get people to volunteer? A. Yes, sir, to volunteer their enlistment in the service.

Q. You did not expect any pamphlets or anything else to be given out that were illegal? A. No, sir.

Q. Did you see any of the pamphlets that were being given out? A. I did, sir.

Q. And before you placed Kramer under arrest? A. I did, sir.

Q. And did you read them? A. I did, sir.

Q. But you didn't attempt to arrest Kramer at that time? A. I immediately, after sending one of my men for one of these circulars, and after seeing the circular and reading its contents, I made up my mind to go through the Garden to get these people who were giving them out.

Q. Where were you when you had secured one of the circulars up in the balcony? A. In one of the boxes on the south side of the building.

Q. Then what did you do? A. Why, I immediately went up to get the people.

Q. Were there any policemen around the box where you were sitting? A. No, sir.

Q. Did you see policemen inside the Garden when you got in? A. There was cops standing at the door at the employees' entrance.

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Q. Were there any on that balcony where you were when you went up to arrest Kramer? A. No, sir.

Q. When you arrested Kramer, who else did you see near Kramer? A. Walker.

Q. And did you see Becker at any time before you arrested Kramer or afterwards in that balcony? A. No, sir, I did not.

Q. Did you see Sternberg, Walker and Kramer together at that time or at any time? A. No, sir; I seen them down—after they were arrested, downstairs.

Q. Upstairs? A. No, sir.

Q. When you went to the station house with Detective Finan, did you talk over this case with him? A. I didn't go to any station house.

Q. Where did you go? A. To the Police Court.

Q. Did you talk the case over with Detective Finan? A. Not at that time, sir.

Q. Did you tell him why you arrested Kramer? A. I did, after we got there.

Q. What did you tell him? A. I told him that I arrested him on the—as far as I understood it was a Federal charge.

Q. What Federal charge? A. Why, that I could not just say; I was instructed by my commanding officer to observe and hear, and if I thought there was any violation against the new Conscription Law or anything in violation of the Federal laws, I had the authority to make an arrest, and I made the arrest on that principle.

Q. And took the place of the Police Department? A. Why, I would not say I was taking the place of the Police Department, no, sir.

Q. Well, did you tell Detective Finan what you heard and what Kramer did and why you arrested him? A. In the Police Court, sir.

Q. And did he tell you that he heard, or that Kramer had also spoken to him? A. Not at that time.

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Q. And asked him not to register? A. I cannot recall whether he did or not.

Q. You would recall if he did tell you that Kramer asked him not to register, wouldn't you?

A. I don't remember, sir; I cannot recall.

JAMES HENRY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are attached to the 69th New York Infantry, United States National Guard? A. Yes, sir.

Q. Did you attend this Peace meeting at Madison Square Garden on the evening of the 31st day of May, 1917? A. Yes, sir.

Q. Did you see any of the four defendants at that meeting? A. Yes, sir.

Q. Which ones? A. Kramer, Walker and Becker.

Q. Kramer, Walker and Becker? A. Yes, sir.

Q. In other words, you saw at the meeting all except the other defendant, Sternberg; is that correct? A. Yes, sir.

Q. Now, to which defendant was your notice first directed? A. Why, I noticed Kramer being placed under arrest by Sergeant Silverman, and he directed me, Sergeant Silverman—

Q. Who did? A. Sergeant Silverman.

Q. Was that in the presence of Kramer? A. No, sir.

Q. Then you better not say that. Silverman gave you some directions. Was that before Kramer's arrest? A. After Kramer's arrest.

Q. Was Kramer there when he told you that? A. No, sir.

Q. He was not? A. No, sir.

Q. Had he handed Kramer over to the detective at that time? A. Yes, sir.

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Q. The man whom you knew afterwards to be Detective Finan? A. Yes, sir.

Q. You didn't know Finan before that? A. No, sir.

Q. Then you saw Kramer being arrested by Silverman, is that correct? A. Yes, sir.

Q. And then did you see Finan take charge of Kramer? A. Yes, sir.

Q. Well, then, tell us what you did then, not what Silverman, that is, Sergeant Silverman said to you, but what you did? A. I noticed Kramer being placed under arrest and I noticed defendant Walker.

Q. Stand up, defendant Walker. (Defendant Walker stands up.) Is that the defendant you have reference to? A. Yes.

Q. What did you notice Walker doing? A. Giving out one or two of the pamphlets to the men.

Q. What kind? Have they been offered in evidence here too? A. Yes, sir, Exhibit No. 1.

Q. Exhibit No. 1? A. Yes, sir. And Sergeant Silverman instructed me to place Walker under arrest. I immediately made a move towards Walker. Walker then laid down the pamphlets.

Q. Was this on that same balcony on which Kramer was arrested? A. Yes, sir.

Q. How many feet would you say Walker was away from Kramer? A. About twenty feet away. I went up and first Walker placed down the pamphlets, and I went up and grabbed him by one arm, and at the same time I reached for the pamphlets and got possession of the pamphlets. Then I brought the defendant——

Q. I show you Government's Exhibit No. 4 with the name Joseph Walker written on there by Detective Finan, and I ask you whether these are the pamphlets you took from Walker as he was trying to throw them away (showing papers to witness)? A. Yes, sir.

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Q. You identified those before the United States Commissioner originally in the preliminary hearing? A. Yes, sir.

Q. You stated, didn't you, that Walker tried to put them out of the way as you approached? A. Yes, tried to lay them down.

Q. You grabbed Walker with one hand and the papers with the other; is that your testimony? A. Yes, sir.

By the Court.

Q. Just before that, had you seen Walker hand these pamphlets to anyone? A. Yes, sir.

Q. To how many people did you see that? A. I should say about a couple of people before I reached him.

Q. A couple of people before you reached him? A. Yes, sir.

By Mr. Content.

Q. Before you got to Walker, you saw him give them out to a couple of people? A. Yes, sir.

Q. By that time you were up with him? A. I was up to him.

Q. And then he tried to put the pamphlets down and immediately you took hold of him with one hand and the pamphlets with the other? A. Yes, sir.

Q. Was Sergeant Silverman right behind you? A. Yes, sir.

Q. And you finally arrested him? A. Yes, sir.

Q. What did you do? A. Sergeant Silverman took hold of him and then we brought him over by the arm and turned him over to Mr. Finan.

Q. Turned him over to Finan too? A. Yes, sir.

Q. And Finan had two prisoners by this time? A. Yes, sir.

Q. What happened next, Mr. Henry? A. I went downstairs and just before we reached the bottom he took off the—Kramer took off his hat and started

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waving it and made these remarks: "Be sure and tell the Chief," or words to that effect.

By the Court.

Q. Kramer said it? A. Yes, sir.

By Mr. Content.

Q. Kramer said that to somebody you didn't know? A. Yes, sir.

Q. Somebody not under arrest? A. Yes, sir. A detective took the prisoners over to the other end of the hall and placed them there; in pursuance to orders from Sergeant Silverman I went around the hall to see if I could notice anybody else giving out these no-conscription circulars.

Q. You were not there when Sternberg was added to the other two, were you? A. No, sir.

Q. So you went about the hall pursuant to your orders to see if anybody else was giving out circulars of the type of Government's Exhibits 1 and 2? A. Yes, sir.

Q. What part of the hall did you go to next? A. I walked all around the hall a couple of times; and around ten-thirty, I was going out the main entrance and I noticed the defendant Becker in the midst of a crowd surrounded by seven or eight persons giving out circulars.

Q. You saw Becker physically handing out these circulars? A. Yes, sir.

Q. Or leaflets? A. Yes, sir.

Q. How many people do you suppose you saw him give them to before you arrested him? A. Why I should say about seven or eight.

Q. He was distributing them promiscuously? A. Yes, sir. I immediately, when I was sure he was giving out these no-conscription circulars, placed him under arrest.

Q. Did he have any circulars with him in his possession at the time you placed him under arrest? A. Yes, sir.

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Q. Now, I show you a bundle of circulars that were offered in evidence before the Commissioner, and I ask you whether or not they are the circulars you took from Becker (handing same to witness)?

A. Yes, sir.

Q. And do they comprise both kinds of papers, that is, Exhibits 1 and 2? A. Yes, sir.

Q. The smaller and the larger? A. Yes, sir.

Mr. Content: I offer these in evidence. I am offering this bundle as a whole, so as to give them one number only.

Received in evidence and marked Government's Exhibit No. 5.)

Q. Then what did you do with Becker?

By the Court.

Q. Did Becker have this bundle No. 5 in his hand? A. Yes, sir.

Q. And you took it from him? A. Yes, sir.

By Mr. Content.

Q. What did you do with Becker then? A. I turned him over to the lieutenant of the police there.

Q. A uniformed lieutenant? A. Yes, sir. I notified him I would make a charge against him and he said all right, and he told one of the officers stationed nearest the entrance of the hall and told him to take the prisoner along to the station house.

Q. And did you go along? A. Yes, sir.

Q. Is that all that you had to do? A. On the way over to the station house the defendant Becker claimed that he did not know what he was giving out; that somebody just handed him these pamphlets and he just was going to give them out, not knowing what they were.

Q. Claimed he did not know what he was giving out, that somebody gave them to him and he didn't know what he was giving out? A. Yes, sir.

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Q. Was that all the substance of the conversation on the way to the station house?

Mr. Weinberger: Becker or Walker?

Mr. Content: Becker.

Q. Is that your answer that Becker on the way to the station house claimed he did not know what he was giving out. Is that right? A. Yes, sir.

Q. Have you told us everything you had to do with this meeting? A. Yes, sir.

Cross-examination by Mr. Weinberger.

Q. Becker stand up. (Defendant Becker stands up.) You mean to say that this defendant told you on the way to the station house he did not know what he was giving out? A. Yes, sir.

Q. You are absolutely sure of that, are you? A. Positive. The officer that was with me overheard the conversation also.

Q. The officer, if there was any, overheard the conversation, you say? A. Yes, sir.

Q. Officer Finan? A. No, sir.

Q. What officer? A. An officer in uniform.

Q. Is he here? A. Yes, sir.

Q. What is his name? A. I think his name is Dexter.

Mr. Weinberger: Is Officer Dexter in court?

Mr. Content: I did not subpoena him, Mr. Weinberger.

Q. Did anyone tell you on the way to the station house or in the station house that the giving out of these circulars was not a violation of law, but that you had to get something in addition? A. No, sir.

Q. Did you hear any of the other officers or detectives discussing the proposition that the giving out of these circulars was not a violation of law? A. No, sir.

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Q. You have no feeling against the defendant and do not want to add anything so as to make sure they get convicted? A. No, sir.

Q. When you say that Walker tried to drop the circulars as you went to arrest him, you are not stating that merely because that tends to show a guilty conscience, are you? A. No, sir.

Q. That fact is a thing you imagined a man with a guilty conscience would try to do? A. No, sir.

Q. You are not stating that Becker told you he didn't know what was in the circulars, you are not saying that because you also think that will show that he had a guilty conscience?

Q. And he was trying to get out of it? A. No, sir.

Q. Isn't it a fact that when you arrested Becker he had just gotten these pamphlets from the checking room of Madison Square Garden? A. I don't know, sir.

Q. Isn't it a fact that he had not given out a single one at the time that you placed him under arrest? A. I noticed him giving them out.

Q. He was right by the check room, was he not, on the way out? A. I don't recall just where the check room is; I could not say.

Q. Where did you arrest him? A. Why, right in the hall itself; there is a little hall there which leads from Madison avenue right into the main hall.

Q. Didn't you see the checking room right near where you arrested the defendant Becker? A. I didn't notice.

Q. Didn't you notice anything except the fact that you grabbed this man? A. I cannot—I cannot recall where the rooms are located; I noticed that there was some rooms on either side of the hall there, I didn't pay any attention to them.

Q. You did not hear any of these defendants at any time state or tell people not to register? A. No, sir.

Q. Did Becker state it? A. No, sir.

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Q. Did Walker state it? A. No, sir.

Q. The only thing you want to testify is that this man was giving these pamphlets out? A. Yes, sir.

Q. And that Walker seemed to have a guilty conscience at the time and that he tried to drop them?

The Court: He didn't say anything of that sort.

Mr. Content: He didn't say anything about that.

Mr. Weinberger: I mean that is the inference he wants the jury to have that he drew or tried to draw.

Mr. Content: He don't want the jury to draw any inference, he told what he saw.

The Court: In answer to that question he said "no."

By the Court.

Q. You are just telling what you saw? A. Yes, sir; what I saw and heard.

By Mr. Weinberger.

Q. You are not adding to what Walker did by saying that he tried to drop those? A. No, sir.

Q. Did he drop them? A. He did, sir, or tried to.

Q. And you picked them up, what you thought he had dropped? A. He tried to drop them, that is, he is putting them down on the floor when I grabbed his hand, and I got hold of his arm with one hand and I grabbed hold of the leaflets and he laid them down, with the other——

Q. And he was letting them go at the time you grabbed hold of him, wasn't he? A. I could not say that for sure.

Q. How did you grab him, from the rear or the front? A. From the rear.

Q. Why should he want, at that particular moment, to put them down?

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Mr. Content: How does he know why Walker should want anything?

Mr. Weinberger: If he knows.

The Court: Objection sustained.

Q. Was there any officer there to arrest Walker at that time? A. Why, Sergeant Silverman was there and he placed Walker under arrest and took him away.

Q. Where was he? A. Right in back of me.

Q. Back of whom? A. Back of me, as I placed Walker under arrest.

Q. Walker did not see him or you, that is, you or Sergeant Silverman? A. I could not say that.

Q. You don't know whether Walker was trying to bend down to do anything else? A. Why, according to the way I saw it he deliberately tried to lay down those papers.

Q. There was a crowd around there at the time? A. Not a big one, some people.

Q. Where were you when you placed Walker under arrest? A. About twenty feet from Mr. Kramer, when he was placed under arrest, he was.

Q. And after you arrested Walker what did you do with him? A. Why, I walked Walker over to where Detective Finan was standing, assisted by Sergeant Silverman and turned Walker over to Detective Finan.

Q. Then what did you do? A. I went downstairs behind the two prisoners.

Q. And when did you get Becker? A. Why, that was about fifteen or twenty minutes later.

Q. Where? A. In the entrance to the main hall.

Q. Did Becker, did he tell you that he was Maurice Becker that drew that picture (indicating)? A. No, sir, he did not tell me.

Q. You went with the officer to the police station? A. I did, sir.

Q. Did you hear him at any time state that he was Maurice Becker? A. Why, the name he gave at court was Morris Becker, at the station house.

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Q. And you want to say, and want this jury to believe, that Morris Becker told you that he didn't know what he was giving out? A. Yes, sir, that is the words he used to me.

Q. You also want this jury to believe that he was actually giving these leaflets out at that place? A. Yes, sir.

LAWRENCE BEVINS, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are an enlisted man in the United States Navy? A. I am.

Q. And at present being assigned to recruiting where? A. 42nd street and 5th avenue.

Q. The same place Sergeant Silverman was assigned to? A. Yes, sir.

Q. Did you attend the meeting at Madison Square Garden on the evening of May 31st, 1917? A. Yes, sir.

Q. Did you see any of these four defendants at that meeting? A. After the arrest I saw him.

Q. Whom did you see before the arrest? A. Well, I personally arrested Sternberg.

Q. Wasn't he the first one you saw? A. No, I saw the others under arrest before I arrested him.

Q. There were others under arrest first? A. Yes, before I arrested him.

Q. Did you see Kramer arrested by Sergeant Silverman? A. No, sir; I saw him shortly after that.

Q. You saw him shortly after that? A. Yes, sir.

Q. Saw Walker under arrest at that time, too? A. Yes, sir.

Q. So when you first saw Kramer and Walker they were under arrest? A. Yes, sir.

Q. Were they in the custody of Detective Sergeant Finan? A. Yes, sir.

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Q. After they were arrested what happened? A. Sergeant Silverman ordered me to go out—there was three of us, ordered us to go out into the Garden and see if we could find anyone distributing literature.

Q. Distributing literature? A. Yes, sir.

Q. Where did you go? A. I went down on the ground floor, that was on the 26th street side; I saw from the opposite side on the top balcony papers coming down and another fellow was with me from the 22nd Engineers by name, Bowen, and he was on the top balcony on the 27th street side.

Q. You saw what? A. I saw these papers coming down.

Q. You saw them dropping down from the top balcony on which side? A. On the 27th street side.

Q. On the 27th street side. That is the north side of the building? A. Yes, sir. We went up there and found this Sternberg.

Q. Stand up Sternberg. (The defendant Sternberg stands up.) Is that the man you referred to? A. Yes, sir, and another person with him.

Q. Somebody you did not arrest? A. I did not arrest him.

Q. Did Sternberg have anything in his possession? A. He had these papers in his pocket, they were behind him, he had them in his pocket.

Q. I show you a bundle of papers that you identified before the United States Commissioner and which Mr. Finan has identified by writing the name "Sternberg" on them? A. Yes, sir.

Q. And I ask you if that is the one which you have been talking about—those are the papers that you have been speaking of which you saw from down below (handing same to witness)? A. Yes, sir.

Q. Those are the same ones which you had? A. Yes, sir, also there was a little card which had a place for putting the name and address on where they asked you to send something, you were sup-

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posed to put your name and address on it and send it to them.

Q. That has been lost, has it? A. That was turned over to one of the Secret Service men, that was down below.

By the Court.

Q. Is that little card in the bundle? A. In with the other stuff.

Q. That was in his hand? A. He had it on him when I got the bundle, he had them in his pocket.

Q. Did you see Sternberg give these circulars to anyone? A. They were being dropped from the balcony.

Mr. Content: I offer this bundle which was taken from Sternberg in evidence.

The Court: Received.

(Received in evidence and marked Government's Exhibit No. 6.)

Q. They were being dropped from the balcony? A. Out from the balcony, on the south side of the building, that is, the 27th street side.

Q. You were downstairs? A. I was down below on the ground floor.

Q. Could you see who it was that was dropping these down? A. It was one of these two men, they were all around both of them——

Mr. Weinberger: I move to strike that out. He said he didn't see which did it, he does not know who did it.

The Court: That may be stricken out.

Q. But you saw some papers coming down from the balcony? A. Yes, sir.

Q. When you reached upstairs to the balcony what did you see? A. I saw the men in that section between the two posts, that is, there were only two men.

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Q. Only two men there? A. Only two men in that section and to the best of my knowledge——

Q. Then you went up into the balcony? A. Yes, sir.

Q. When you got there you saw two men? A. Yes, sir.

Q. And one of them was the defendant Sternberg? A. Yes, sir. And a young man was with him.

Q. Did the young man have anything in his possession? A. The other person, I did not see, I did not search, but this was in the side pocket of this defendant.

Q. You saw them on Sternberg personally? A. Yes, sir.

Q. And you placed Sternberg under arrest? A. Yes, sir.

Q. Where did you take him? A. I took him down below and handed him over to Detective Finan with the other prisoners?

Q. That is Kramer and Walker? A. Yes, sir; before that I asked him where he got his pamphlets. He spoke to me in English that he didn't know where he got them. I asked him what he was going to do with them. Then the other person gave me a reason, he wanted to talk for him, he wanted to answer for him and I told him to never mind and keep still, I didn't have anything to do with him and I was talking to the other man. Then I asked him what he was going to do with the pamphlets and he said he didn't know.

Q. Then he said he didn't know? A. Yes, sir.

Q. After he was placed under arrest and put with the others, with the other two prisoners, did you hear any conversation between any of them? A. I did not hear any between the prisoners; I saw them talking but I could not understand what they were saying. I believe Sergeant Silverman told them to keep still.

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Q. Said that to whom? A. To the prisoners to keep still.

Q. Which one? A. Sternberg and Walker, and that anything they said would be used against them.

Q. You heard Silverman warn them? A. Yes, sir, and then I heard Finan call him down for it.

Q. You heard Finan call Silverman down for it? A. Yes, sir.

Cross-examination by Mr. Weinberger.

Q. Did you hear any of the soldiers or the detectives talk between themselves that it was not enough against these defendants that they merely gave out these pamphlets? A. No, sir.

Q. Did you hear them at any time state that they had to get something, some evidence, about telling the people not to register? A. To the best of my knowledge, no.

Q. You have no personal grudge against these defendants? A. Never saw them before, this is the first time.

Q. You are not at all inclined to stretch your testimony in any way to bind these defendants? A. No, sir.

Q. Now, isn't it a fact, that these men were arrested for giving out these leaflets, Government's Exhibits 1 and 2, and after that it was made up to say that these men, or rather Kramer, told people not to register? A. No, sir.

Q. And that there was not enough, according to law, to hold them by giving out simply these pamphlets? A. No, sir, no talk about Kramer.

Q. About any of them, Kramer or the four of them? A. I don't know about that. I was ordered to find any more that was giving out literature; that is all I did.

Q. In other words, the soldiers were of the opinion and you were of the opinion at the time that these pamphlets were being giving out, that that

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was a violation of law? A. I didn't know about the rest of them.

Q. That was your opinion? A. My opinion, yes, but I have been unable and am unable to answer for the rest of them.

Q. And that was the instruction Sergeant Silverman gave out, to arrest anybody who gave these pamphlets out? A. The way he put it, "find any more—" see if I can find any more of the rest of them. That is the way he worded it.

Q. Giving out these pamphlets? A. He didn't say it.

Q. What did you think he referred to? A. He referred to it that way. I don't know anything about them except what they had done.

Q. At the time you arrested Sternberg you were of the opinion that it was a violation of law to give these leaflets out? A. Yes, sir.

Q. You didn't see Sternberg give any of them out? A. I saw them dropping from the place he was at on the balcony.

Q. Did you see him give them out? A. I was not close enough for that.

Q. When you arrested him, he had them in his pocket? A. In his pocket.

Q. Listening to the speakers at the time? A. I thought he could not understand English.

Q. What? A. I thought he could not understand English.

Q. You can understand English without being able to talk it, don't you know that? A. I don't know; I don't know; I am not a Russian.

Q. He went to the meeting, didn't he? A. Seems so, yes, sir.

Q. Sat in a seat like the others listening? Or looking towards where the speakers were, is that right? A. No, sir, he was looking across to the other side.

Q. The other side of what? A. The building there, the speakers were like over on this side and

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he was like over on the other side of the building (indicating).

Q. That is, over toward you? A. He was on the same side as the speakers and he was looking over to the other side of the building away from the speakers.

Q. But he could have heard the speakers at the time? A. Yes, sir.

Q. And he was looking down when you came up behind him and arrested him? A. No, sir, he was looking across.

Q. Oh, looking across. And he didn't see you when you came up behind him to arrest him, did he? A. I don't know.

Q. You didn't come from the side, you came from the rear, didn't you? A. I came from the side.

Q. How far from the side? A. All the way down on the front row, of front seats.

Q. You were downstairs, weren't you? A. I came up and walked right around in front.

Q. He was on the balcony above you? A. No, sir, on the same balcony. I had been down on the ground floor and came all the way up to the top balcony.

Q. You did not see him drop these down, did you? A. It was a little hard to see all the way up there but one of these men was dropping them.

Q. When you saw one of these two men dropping them or you say you saw them dropping them, they were being dropped in that particular section? A. They were the two men, they were the only two men that were in that section and they were dropping them to the best of my knowledge, and I think it was Sternberg, it came down below from him.

Q. And when you got there and placed them—that is, placed Sternberg under arrest, he had these in his pocket? A. Yes, sir.

Q. And he was looking across Madison Square Garden? A. Yes, sir.

Q. And you placed him under arrest? A. I did.

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Q. For having these things in his possession, is that right? A. Yes, sir.

Q. At that time, then, you thought that having these in his possession, or anyone having these leaflets or pamphlets in their possession, was a violation of law? A. No, but anyone like he had them, yes, sir.

Q. That was your opinion at that time? A. Yes, sir.

Q. And that is why you placed him under arrest? A. Certainly.

Redirect examination by Mr. Content.

Q. You were of the opinion it was Sternberg that was distributing these things in the balcony? A. Yes, sir.

Q. And then you went up and when you got there you saw these two men? A. The defendant Sternberg had the bundle of stuff.

Q. And you, thinking that it was he who distributed them, you placed him under arrest? A. From below I thought it was Sternberg.

Q. From below the same man that you subsequently saw up there was the man that you arrested, and that is why you hurried up from below? A. Yes, sir.

Q. And you found these things, these pieces of paper in his possession and placed him under arrest? A. Yes, sir.

Q. And you asked him what he was going to do with them and he said he didn't know? A. Yes, sir.

Q. You are not a lawyer? A. No, sir.

Recross-examination by Mr. Weinberger.

Q. You didn't know at that time anything about people going around in that meeting and telling people not to register? A. No, sir.

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Q. You didn't hear any remarks between the officers at that time that that was what was necessary to make out a case? A. No, sir.

Q. Or at any subsequent time? A. I heard that afterwards.

Q. You heard that afterwards from whom? A. I don't know who said it, but I heard it up in court, I guess.

Q. One of the officers said it, do you mean? A. No, I don't remember who specially had said, but I heard—I do remember that I heard something about it.

Q. That it was necessary to make out the case? A. I didn't hear the word "necessary," no, sir.

Q. Was there anything said at that time that you got to say that these men told people in Madison Square Garden not to register in order to have them held by the Federal Grand Jury? A. No, sir.

Q. If you did hear it would you tell me, or tell it to this jury? A. Why, certainly.

Q. You have no feeling that because you are in the service of the United States that anyone that fights against conscription ought to be in jail? A. No, sir.

Q. You have no feeling that anyone that made a protest against registration or conscription ought to be in jail, have you? A. Personally, I don't like to give my opinion.

Mr. Content: Answer the question anyhow.

Q. You don't like their opinion, but do you feel that if the citizens that have that opinion—do you feel that they have a right to hold a meeting and ask for the repeal of any law? A. I don't know anything about the law.

Q. I am asking you about your feelings, yourself, now. I am not asking you about your knowledge of the law. A. I do not see any objection to holding meetings.

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Q. But you do feel that this was a violation of law? A. Why, certainly.

Q. And this is why you placed him under arrest? A. Yes, sir.

Q. And this man, adding now about Kramer talking to people about not registering, you don't know anything, one way or the other, how that came into this case? A. No, sir.

Mr. Content: He has not testified to any man making that statement or overhearing any conversation.

Mr. Weinberger: I am not asking if he overheard any conversation.

Mr. Content: He is a perfectly truthful witness.

Mr. Weinberger: I want to know whether he knows how these things came into the case.

The Court: It is perfectly evident and obvious that he don't know what other people have said for he was not there.

Mr. Weinberger: I am not asking him only for what he heard now.

The Court: He said no. I understand what you asked him and he understands what you asked him. He answered you.

Mr. Weinberger: But Mr. Content is trying to twist it.

The Court: Ask your next question.

Q. Right before the meeting or the hearing before the Commissioner, was anything discussed between the officers and the detectives? A. Where was that?

Q. Before the hearing before the Commissioner when the four men and the woman were brought up before a Commissioner, did you have any general conversation? A. We had a conversation with Mr. Content, the day after the defendants—I believe it was the day when the warrant was issued and also the other day.

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Q. And before you went into Mr. Content's office, didn't you have a general conversation with the others? A. No, sir.

Q. As to what you were going to testify to? A. No, sir.

Q. That some of them were going to say that Kramer told people not to register? A. No, sir, I had nothing to do with that part of it.

By the Court.

Q. As I understand you, you were under the orders of Sergeant Silverman, were you not? A. Yes, sir.

Q. Who was the highest ranking non-commissioned officer present? A. Yes, sir.

Q. And it was your duty to carry out any order given by him? A. Yes, sir.

Q. And when you saw some of these circulars or pamphlets dropped from the balcony from where you stood, you thought it was dropped by Sternberg? A. Yes, sir.

Q. And you went right up and arrested him? A. I say, that I stood behind him and to see if he would drop any more, but I didn't see him.

Q. Where were these things—were they sticking out of his pocket? A. Yes, so I could read a part of it from behind.

Q. And you then arrested him? A. Yes, sir.

Q. And this whole procedure was pursuant to your obedience to orders? A. Yes, sir.

CLIFFORD HEARD, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Mr. Heard, you are attached to the First Field Artillery, New York, of the United States National Guard? A. Yes, sir.

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Q. You are assigned to recruiting duty also? A. Yes, sir.

Q. Did you attend the meeting at the Madison Square Garden on the evening of May 31st, 1917?

A. Yes, sir.

Q. Tell us what part you took in the arrest of any of these defendants? A. All I did was I saw Kramer arrested and Walker was held.

Q. You simply saw them arrested? A. Yes, sir.

Q. You saw Sergeant Silverman place Kramer under arrest? A. Yes, sir.

Q. You were not taking any active part in that yourself? A. Yes, sir.

Q. Did you overhear any conversation of any sort? A. As we were leaving the employees' entrance of the building I heard Kramer say to somebody on the stairs, "Let the Chief know about them."

Q. Tell the Chief about it? A. Yes, sir.

Q. Is that all you heard? A. That is all the conversation I heard.

Q. Did you hear any other conversation of any of the other defendants? A. No, sir.

Mr. Weinberger: I move to strike this evidence out as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Weinberger: As not binding on the others or anything to do with the conspiracy.

Mr. Content: I think that shows that there were persons present that were in all probability under this man's direction, and this conversation would seem to show that.

The Court: The objection is overruled.

Mr. Weinberger: I respectfully except.

Q. That is all you had to do with it? A. That is all I had to do with it.

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HARRY BAULAND, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Mr. Bauland, you are attached to the 22nd Regiment of Engineers, of New York, United States National Guard? A. Yes, sir.

Q. You are assigned to recruiting duty also? A. Yes, sir.

Q. Did you attend this meeting at Madison Square Garden on the evening of May 31st, 1917? A. Yes, sir.

Q. Did you see any of these defendants at that meeting? A. Well, the first one I noticed was Kramer.

Q. Kramer? A. Yes, sir.

Q. Was that prior to his arrest or after his arrest? A. Before his arrest.

Q. Where was this, what part of the Garden? A. Next to the top balcony.

Q. On which side? A. I don't remember the side. I think it was the 26th street side.

Q. Next to the top balcony? A. Yes, sir.

Q. What was Kramer doing there? A. What was he doing there?

Q. Yes, when you first observed him? A. Well, I saw him give out a circular there, hand it to Detective Finan.

Q. Detective Finan, do you mean this gentleman that was a witness here? A. Yes, sir.

Q. Do you know Detective Finan personally? A. No, sir.

Q. You saw him there and since then you have known him as Detective Finan? A. Yes, sir.

By the Court.

Q. Did he give a circular to somebody before he gave it to Finan? A. Yes, sir.

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Q. To some other citizen? A. Yes, sir.

Q. Then after that you saw him go over to Finan?

A. Yes, sir.

By Mr. Content.

Q. Finan was also in civilian clothes? A. Yes, sir.

Q. So for all you knew, Finan was a civilian? A. Yes.

Q. Not a police officer? A. No, sir.

Q. So that you saw him hand a circular to a man in civilian clothes, and after that you saw him hand one to another man also in civilian clothes and whom you now know to be Detective Finan? A. Yes, sir.

Q. Now, did you hear him say anything to Finan? A. Yes, sir. I was standing about three feet behind him when he handed that circular to Detective Finan and I heard him say—Detective Finan asked him what it was, and he said there is a lot of good information for you. Then he asked him if he was going to register Tuesday. I did not hear what the detective said.

Q. You did not hear Finan's answer, but you heard Kramer ask him if he was going to register on Tuesday? A. Yes, sir. Then he said if none of us register they haven't got police officers and soldiers enough to make us register, but if some of us register we will all have to register.

Q. Is that the substance of the conversation? A. That is all I heard.

Q. After he had finished, he walked away, is that correct? A. Well, he walked—moved a little away and then Sergeant Silverman saw Kramer giving them out and Sergeant Silverman, he came up and put him under arrest, I had nothing to do with the arrest.

Q. You had nothing to do with his arrest? A. No, sir.

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Q. You stood behind Finan at the time that Kramer was talking to Finan? A. Yes, sir.

Q. You didn't know who Finan was at that time? A. No, sir.

Q. And he may have been anybody? A. Yes, sir.

Q. After the arrest of Kramer, what happened?

A. I walked around the balcony then, I did not stay there.

Q. What did you go to do? A. Well, after I saw the circular that was given out, I went around to find if I could get anybody giving them out.

Q. Giving out more circulars? A. Yes, sir.

Q. Did you find anybody else giving them out?

A. No, sir; I walked the opposite way.

Q. You went the opposite direction? I presume by that you mean—which side of the Garden? A. I went around Madison avenue side.

Q. Anybody giving them out there? A. No, sir.

Q. The only one whose arrest you had anything to do with was Kramer? A. Yes, sir.

Q. Did you see Walker arrested, too? A. I didn't see him arrested; I saw them all together downstairs.

Q. You did? A. Yes, sir.

Q. How many were there downstairs? A. Oh, there were three or four.

Q. And he was among those that were arrested and downstairs? A. They were all under arrest.

Q. After they were arrested how many were there altogether? A. There was five of them, I believe.

Q. Five? A. Yes, sir.

By the Court.

Q. Who were the five? A. There was Kramer, Sternberg, Walker, and there was some woman there.

By Mr. Content.

Q. Was that the woman that was discharged on the consent of the Government; is that it? A. Yes,

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sir; there was another woman there but they just chased them away—another woman and another gentleman were ordered by the police away. They were over there and the police chased them away.

Q. They were not arrested? A. No, sir, they were not under arrest.

Q. Had Kramer, Walker, Sternberg, who are now defendants in this court—they were there? A. Yes, sir.

Q. And a woman that was discharged later? A. Yes, sir.

Q. And some people who were not placed under arrest and whom the police told to move along, move away? A. They were, they were there, there were some women there.

Cross-examination by Mr. Weinberger.

Q. Before Mr. Content led you and called your attention to the fact that the five had not been arrested at the same time, where did you get the idea that there was five arrested? A. Well, there was a couple—there was woman, another gentleman, there were two women that was discharged from the case.

Q. There was five under arrest? A. There was six, there would be five—I don't know who was under arrest then, not until they took them to the police court, or not until the police chased these other two away.

Q. Isn't it a fact that the reason you said five was under arrest was that you saw five downstairs? A. No, sir, that is—

Q. Wait a minute. I haven't finished my question. Was that you saw five downstairs, four were held and one was discharged? A. No, sir; I saw the five that were there then.

Q. You don't want your story to not fit into the curve with the stories that the others have told? A. I am just telling what I saw.

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Q. You don't think you are saying it because it is the right number to make up with the number of defendants here, and the one that was discharged?

A. No, sir, I am just telling you what I saw.

Q. If Mr. Content had not called your attention to the fact that the five were not arrested at one time, you would still be just as sure as before that there were five there? A. I saw Becker, and I know that I called out to the officer Henry of the 69th Regiment—

The Court: He didn't say five of them were under arrest, he said he saw five downstairs.

Q. Did you mean five defendants under arrest?

The Court: Not at all, he has not testified to that at all. That is not it.

Mr. Content: There are not five defendants. There never were.

Mr. Weinberger: Four defendants here and one woman who was acquitted, that makes five.

Mr. Content: She was not acquitted; she was discharged before the case was ever considered by the Grand Jury.

Q. You say that you heard Mr. Kramer tell Detective Finan not to register. Did you put Kramer under arrest?

The Court: He did not say that.

A. I did not place him under arrest.

Q. Did you attempt to place him under arrest?

A. No, sir.

Q. Did you call anyone to arrest him? A. No, sir.

Q. Did you go down and report to Sergeant Silverman what you had heard? A. No, sir, I did not report to anybody.

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Q. You just stood right there and heard him say that, didn't you? A. Yes, sir.

Q. And that there would not have been enough soldiers or policemen to arrest them, if they wouldn't all register? A. Yes, sir.

Q. And you did nothing? A. I did nothing.

Q. When you saw what the circulars were he was giving out? A. I did not see them—I had not seen them at that time, no, sir.

Q. How far were you away? A. I picked one up a minute or so later.

Q. You did not see him give out a lot of circulars to other people? A. I saw him handing them out but I did not get one of them.

The Court: He did not see the circulars at all.

The Witness: That is, not until after then.

Q. You didn't know how many circulars were given out? A. No, sir.

Q. You didn't know how many people got them before Detective Finan got them? A. No, sir.

Q. How did you come to go there? A. I went there the same as any other citizen; I got one of these slips at 5th avenue and 42nd street, telling of this meeting.

Q. You did not go there thinking you could get recruits in this peace meeting, did you? A. Certainly I did.

Q. You thought you could get recruits there, did you? A. Yes, sir.

Q. That is what you went there for? A. Yes, sir.

Q. You didn't go there to disturb the meeting? A. No, sir.

Q. You were not one of the group that disturbed that meeting?

Mr. Content: There is no evidence that anybody did.

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The Court: There is no such charge.

Mr. Weinberger: I asked him whether he was one of the group that disturbed the meeting.

Mr. Content: That is an improper question.

The Court: There is no evidence at all that the meeting was disturbed.

Q. Did you see the disturbing of the meeting by the soldiers? A. There was not any disturbance there.

Q. Did you not see that? A. No, sir.

Q. Did you hear Dr. Magnes state— A. I did not hear Dr. Magnes.

Q. Listen to my question and don't be so sure you didn't hear anything you are not supposed to hear—

Mr. Content: Wait a moment. That is an improper remark.

The Court: Yes, it is.

Mr. Weinberger: I submit his answering before I even state the rest of the question shows that he wants everything to fit right in.

The Court: Now, what is the use of making such a remark as that, he was answering questions that you put to him.

Mr. Weinberger: He was answering too fast.

The Court: He is answering as he is asked. You keep on asking questions and he will answer them.

Q. Did you hear Dr. Magnes state from the platform that the crowd should be absolutely quiet, that the soldiers were trying to disturb the meeting, was what the police called a plant?

Mr. Content: I object to anything Dr. Magnes said as nothing to do with this mat-

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ter at all, and as a matter of fact he did not say any such thing.

The Court: Let him answer.

A. No, sir, I did not hear that.

Q. Did you see the pamphlets later, after these men were arrested? A. Yes, sir.

Q. Was it stated by one of the soldiers that these pamphlets were a violation of law? A. Nothing was said at all that I heard.

Q. Were not you directed by Sergeant Silverman to go around and arrest anyone else giving out these pamphlets? A. No, sir, I was not directed by Sergeant Silverman. He asked me and a few others if I would go around in the building and see if there were any people that were distributing these and to come back and tell him, and I went around looking for some people.

Q. And did you go around through the building? A. Yes, sir.

Q. And that was because it was considered that these pamphlets were a violation of law? A. Yes, sir.

Q. Did anyone tell you that the giving out of these pamphlets was not enough to hold these defendants and that you had to have something about not registering or telling people not to register? A. It was enough without telling them not to register.

Q. That is your opinion that that was enough? A. Well, I heard that statement that Kramer made before that.

Q. Did anybody tell you at any time after the arrest, that it was not enough to charge the defendants with giving out these pamphlets, but that you must have testimony? A. No, sir.

Q. That people—or that Kramer told people not to register? A. No, sir.

Q. Was anything discussed like that? A. No, sir.

Q. Between you? A. No, sir.

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Q. Did you have any discussion like that with Detective Finan? A. No, sir.

Q. Did you have any discussion with Detective Finan in reference to these pamphlets being legal? A. No, sir.

Q. Did you have any talk between the soldiers at all? A. No, sir, I left.

Q. That the pamphlets were illegal? A. No, sir, I did not go with rest of them.

Q. Did you talk over anything about the pamphlets? A. When we were down in Mr. Content's office, yes, sir.

Q. Not before? A. No, sir.

Q. Then you want this jury to believe that out of 15000 people you happened to just place yourself within three feet of Detective Finan and Mr. Kramer and heard these alleged remarks or conversation? A. I did not happen. I was walking around there and stopped there.

Q. And just happened, out of 15,000 people, to stop behind Detective Finan? A. I don't know how many was there, I could not say.

Q. The Garden was packed from cellar to roof? A. I don't know how many was there.

Q. The Garden was packed, wasn't it? A. Yes, it was packed.

Q. And a big crowd outside? A. I did not see the crowd outside.

Mr. Content: There was not a soul outside.

Q. What time did you get inside? A. About nine o'clock.

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WILLIAM J. MORONEY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

• *Direct examination by Mr. Content.*

Q. Mr. Moroney, you are a member of the 69th New York Infantry? A. 8th Coast Defense Command.

Q. 8th New York Coast Defense Command, United States National Guard? A. Yes, sir.

Q. That is the same command as Sergeant Silverman? A. Yes, sir.

Q. He is your superior non-commissioned officer? A. Yes.

Q. Did you attend the meeting at Madison Square Garden on the 31st of May, 1917? A. Yes, sir.

Q. Did you see any of these defendants at that meeting? A. Yes, sir.

Q. Which one did you see first? A. Louis Kramer.

Q. Where was he when you first saw him? A. When I first saw Louis Kramer there was a group of them standing together on the second floor and Louis Kramer was giving out circulars in bunches to four or five of them and directing with his hands to go in different places.

Q. You did not hear what he said to the different people? A. He told them to go around and give them out.

Q. You could not hear that? A. Yes, sir.

Q. You are testifying from his gesticulations? A. He was beckoning with his hands.

Q. Now, to all these he was not giving it in single leaflets, he was giving them in bundles, wasn't he? A. Giving them in bundles.

Q. Was the defendant Becker there at that time? Stand up Becker. (Defendant Becker stands up.)

A. I could not recognize him.

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Q. Stand up Kramer. (Defendant Kramer stands up.) A. I recognize Sternberg.

Q. You recall Kramer as being the man who gave them out? A. Yes, sir.

Q. Who else? A. The man sitting behind him.

Q. Sternberg? A. Sternberg and Walker I recognize, those three.

Q. You refer to these men now? A. Yes, sir.

Q. You are sure of them? A. Yes.

By the Court.

Q. Did I understand that these three people were in one group together? A. There was more than the three.

Q. I mean that these three were among that group? A. Yes, sir.

Q. That is Kramer, Sternberg and Walker? A. Yes.

Q. And at the same time in the same general place? A. At the same general place.

By Mr. Content.

Q. On the next to the top balcony? A. On the second balcony.

Q. And Kramer was the one who was giving out the large bundles? A. Yes, sir.

Q. In other words, Sternberg and Walker were receiving them from Kramer? A. Sternberg and Walker was receiving that stuff from Kramer.

Q. And were receiving their directions that you could only tell by the gesticulations of the hand; is that correct? A. Yes, sir.

Q. Now, you could not hear what was said? A. Yes.

Q. He pointed to different directions? A. Just moved around with the hand.

Q. After that did these people who were receiving the bundles from Kramer leave? A. I seen Kramer give out these circulars, I was within about one

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or two feet behind, and I just happened to catch him saying to one man, "Don't register on June 5th."

Q. I didn't hear that. A. Kramer said to one man, "Don't register on June 5th." The answer I could not catch. There was a noise in the hall and everything.

Q. Where were you standing with reference to Kramer? A. I was about two and one-half feet behind him by Sergeant Silverman.

Q. Were you behind Silverman? A. I was behind Silverman.

Q. And he was behind Kramer? A. Yes.

Q. What did you remember of the conversation you heard there? A. Why, that he told these men not to register on June 5th.

Q. Told these men not to register on June 5th? A. That is all I heard.

Q. After that, did Silverman place him under arrest? A. Yes, sir.

Q. After Kramer's arrest, what did you do or hear or see? A. We went downstairs, we turned over Kramer to this detective who came over and said he was a detective and showed his shield and we handed Kramer over to him, I mean Officer Finan.

Q. You didn't know Finan before that? A. No, sir; we went downstairs without Mr. Finan and over into the corner at 26th street, and as we stood there Sternberg was brought in. Then when this big tall fellow came in, Sternberg said in broken English, "How much of the stuff did they get on you?"

By the Court.

Q. To whom did he say that? A. Walker. Sternberg said that to Walker.

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By Mr. Content.

Q. Was this the part that you heard them talking about? A. Yes, sir.

Q. Which one started the conversation that you have just related, which one spoke first? A. Sternberg in broken English.

Q. Sternberg spoke to Walker and said what? A. "How much stuff did they get on you?"

Q. What did Walker reply? A. Well, I didn't catch the answer because there was a whole bunch of people in there altogether and I turned around to hold them back.

Q. All you heard was "how much of the stuff did they get on you?" A. Yes, sir.

Q. From Sternberg to Walker? A. Yes, sir.

Q. Now, you have seen defendant——

By the Court.

Q. You said something about you only heard part of a conversation, only part of the talk? A. I did not hear it all as I stood behind the others.

Q. The three men you saw were Kramer, Sternberg and Walker? A. Kramer, Sternberg and Walker.

Q. That is, Sternberg, according to your testimony, when he was brought in asked Walker, "How much did they get on you," or words to that effect? A. Yes, that in broken English.

By Mr. Content.

Q. You did not hear Walker's reply? A. I did not hear his reply.

Q. It was Sternberg that talked to Walker? A. Yes, sir.

Q. That is clear? A. Yes, sir, that is clear.

Cross-examination by Mr. Weinberger.

Q. Did you hear Sternberg say to Walker in English, "How much of the stuff did they get on you"? A. In broken English.

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Q. You understand Yiddish? A. No, sir.

Q. You are positive that Sternberg said to Walker "How much of the stuff did they get on you?" A. In English, yes, sir; in broken English.

Q. Whom did you hear Kramer state, "Don't register on June 5th," to? A. Some total stranger to me.

Q. Did you hear him talk or see him talk to Officer Finan? A. No, sir.

Q. How long before his arrest, did you hear him tell someone not to register on June 5th? A. I should judge about three or four seconds; Sergeant Silverman placed him right under arrest.

Q. You did not place him under arrest? A. No, sir, I assisted Sergeant Silverman when he made the remark to him, "Call my friends there will be trouble;" and I took hold of him with Sergeant Silverman and walked him away.

By the Court.

Q. Who made that threat? A. Kramer.

By Mr. Weinberger.

Q. Do you know the name of any man he spoke to at that time? A. No, sir.

Q. You quietly grabbed him with Officer Silverman and took him downstairs? A. Yes, sir.

Q. You could not have gotten the name of the man, could you? A. Well, that would be a hard question to answer, there were so many people up there; it would be a pretty hard place to get to to find out anybody who heard it, because everybody closed right in.

Q. You mean to tell me you could not get the man you saw him talking to if you wanted to, after you had grabbed him? A. If the man had held on to you you probably could have.

Q. Were the people going out at that time? A. They were going out, they were passing out that way all the time.

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Q. Was the meeting about over at the time of the arrest? A. No, sir.

Q. People sitting? A. Yes, sir.

Q. The man that Kramer spoke to, was he sitting or standing? A. Standing at the rail on the balcony behind the seats.

Q. Were there other citizens standing behind there? A. Yes, sir.

Q. What was Kramer doing walking up and down and giving out these pamphlets? A. Just started along, to walk away and give out the pamphlets when he spoke to him, to this man.

Q. You didn't see him give out pamphlets at this meeting before that? A. Yes, sir, hand them over their shoulders in that way to various people.

Q. Talking to them? A. Making motions and talking to them, he first handed them over, the circulars, and then spoke to them.

Q. How far away were you when you saw him first? A. About five feet.

Q. And he walked towards you? A. No, I walked towards him.

Q. And did you see the pamphlets that he gave out? A. Yes, sir.

Q. Where did the conversation between Sternberg and Walker take place? A. On the main floor, at the corner of 26th street.

Q. You were all right in one place when they were under arrest? A. What?

Q. You and the prisoners were all right in one place there when they were under arrest and this conversation took place? A. When Kramer was taken to the ground floor by Officer Finan, Silverman and myself, I remained on the ground floor. When Sternberg was brought down and he was placed there and when they brought Walker down there, he was just about two feet from where Sternberg was standing and a whole crowd of people following when they brought Walker in and when he got to Sternberg, Sternberg said in broken English,

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"How much of the stuff did they get on you?" And Walker replied while I was pushing the crowd back, and when the crowd broke up I went upstairs on the top floor, the top gallery and came down a little while after, and we took the men up as far as 31st street.

Q. Did you hear Sternberg say to Walker, "Did they hear you tell the people not to register?"

Mr. Content: He has not testified to that or any such testimony.

Mr. Weinberger: I am asking him the question, Mr. Content.

By the Court.

Q. Did you hear that? A. No, sir.

By Mr. Weinberger.

Q. You want this jury to believe that you heard Sternberg in broken English while under arrest all of you right close, right up there close to him, ask Walker, did they find any of the stuff on you? A. Yes, sir.

Redirect examination by Mr. Content.

Q. That is all you heard, just that part of it?

A. Just that part of it.

Q. You have not added anything you did not hear? A. No, sir, that is all I heard.

Mr. Content: The Government rests.

THE GOVERNMENT RESTS.

Mr. Weinberger: I move to dismiss the case on behalf of the four defendants on the ground that no case of conspiracy has been proven; the only testimony here is that four men were giving out circulars which is not a

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violation of law, and that one of them stated, "Don't register." That is the only charge of conspiracy here, it is in reference to an agreement between four men and others to tell people not to register; but there is no testimony before the Court to show that there was a conspiracy by even these four men here concerned.

The Court: Motion denied.

Mr. Weinberger: I now move on behalf of the defendant Becker that the only testimony here, so far as defendant Becker is concerned, is that he gave out circulars at this meeting, the circulars not being a violation of law, and the charge being in reference to stating, "Don't register," and there is no testimony as far as he is concerned that he was any part of any conspiracy, if there was one.

The Court: Motion denied.

Mr. Weinberger: I respectfully except to your Honor's denial of the motion; and I now make the same motion on behalf of each and every one of the other defendants.

The Court: Motion denied.

Mr. Weinberger: And I respectfully except as to each.

DEFENDANTS' CASE.

(Mr. Weinberger opens to the jury in behalf of the defendants.)

MORRIS BECKER, one of the defendants, called as a witness in his own behalf, testified as follows:

Direct examination by Mr. Weinberger.

Q. Where do you live, Mr. Becker? A. 119 East 102nd street.

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Q. Are you the Maurice Becker who drew the picture on that leaflet? A. No, sir.

Q. Did you ever tell any of the officers or the defendants, that you are the Maurice Becker? A. No, sir. I did not say that, and I never have said that to any officer.

Q. Were you in the balcony on the 31st day of May with Kramer, Sternberg and Walker giving out leaflets? A. Never seen those fellows until that evening, and there, and I never seen them in my life before.

Q. Did you go to that meeting to give out Government's Exhibit 1 and Government's Exhibit 2, the leaflets? A. No, only Exhibit 1, I went to give out and I did not give out the other.

Q. When you got to the meeting, what happened? A. Just what happened—I went into the private entrance and as I was supposed to be on the Committee, to give out these here circulars. When I came in, I asked the young girl which I thought would answer the call for the papers, I did not know her, and I asked her where the Arrangement Committee was which will allow me to give out the circulars. She introduced me to one of the men on the floor. I was carrying this little package, about fifty, I don't know how many, announcements, circulars to the meeting.

Q. That is the big circular that just announces the meeting at Hunts Point Palace? A. That is what it was.

Q. That circular? (Indicating.) A. Yes, sir. Now, the gentleman that I was introduced to, said to me at once, "What is this here?" I told him this is a circular what I ask if I can give out at this meeting. He said no, you cannot give it out and give me this package. I gave him that package and I asked when will I get it back. He said everything will be checked in the check room. He never told me that this circular is not allowed to give out by the police. I understood that these circulars is not

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allowed to be given out—not to be given out in this meeting. That is the reason that the man gave to me, and I went in.

Q. Did you check these circulars? A. Yes.

Q. Where did you see those circulars again? A. When I went out. First I want to state that when this here man told me—for I knew I was to meet a Committee in this here room, where the Madison Square Committee meets, and he said, "No use to wait here any more, as any man that comes here will be told to go away and that you cannot see your Committee here." Then I went away, I did not see any of my committee that evening. When I went back from the meeting I came over to the check room and I got my package, a little package, which was wrapped in a piece of paper like that, and not covered up any more than that (indicating). And I took my package and when I moved away from the window one of the soldiers came over and he grabbed hold of him with the circulars. They dropped to the ground; I did not do it purposely, but the way he handled me, they fell down and he arrested me. On the way to the police station I never spoke to that man. What he said to me I don't remember. I didn't pay any attention for the reason I did not want to get into an argument, because I understood I have no use. They arrested me down there at whatever they call it, and I have to go with them; and when I come up to one place, 21st street, to one place with them, and I was told then to wait, that I had to go to answer to the police, and that the police would take me in the wagon to another place. And I don't know where, I guess it must have been 57th street. When we got to 57th street, I asked a man, I don't know what he is, one I never saw before sitting in the court. I said to him—he was sitting at a desk and I ask him, "Will you tell me why I was arrested?" That is the first time I spoke, and that man told me—I don't know whether the Sergeant was in there or outside—he told me "You are

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arrested because of finding in your possession these here circulars." I didn't say anything—that is what I said to him, I said, "I am surprised that I am, if that is what I am arrested for since this here meeting is advertised in the papers, and I don't think that is quite correct." I did not make any statement, I did not know what it was. If I belonged to the League, I certainly would have told them if they had asked me; and gentlemen, I want to tell you that nobody forced me here to say that, that I belong to the League, there is no evidence that I belong to the League, there is no evidence by anybody that anybody belongs to the League, but I am taking it on myself to say that I belong to the League. But should I be brought here for simply belonging to that League, and I swear I certainly am a member of that League, but I do tell you that I did not give out any of those circulars, and I don't think I will be convicted because I belong to a League because I did not give out any circulars at all that night.

Q. You do belong to the No-Conscription League?

A. Yes, sir, I do.

Q. You did not tell anybody at this meeting not to register? A. No, sir, I did not.

Q. You believe in anarchy, do you not? A. I do.

Q. You are an anarchist? A. Yes, sir.

Q. Would you define to this jury what you understand to be anarchy? A. Anarchy to my mind, anarchism is a system of society based on justice, on brotherhood, on equality and not on coercion or force or violence; it is a movement to do away with all kinds of Government, not only organized Government, but Government of one individual by another individual. I am against all force of Government for that reason because Governments rest on force and violence and I am opposed by nature, I am opposed to all force or violence and force, and that is the belief of all anarchists. That is all there is to anarchism, it is a social philosophy.

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Q. Do you believe in overthrowing Government by physical force? A. No, sir.

Q. By dynamite? A. No, sir.

Q. By assassination? A. No, sir.

Q. Or any use of force in any respect other than ideas? A. No, I do not believe in overthrowing anything by force; we can get along without any detectives, society can be educated to not need them. It is my main object that I may by force of mental suggestion be able to do away with all government. I am against government. I have influence and I object to that form of force being applied——

By the Court.

Q. See if I understand you correctly: You don't believe in any government, is that correct? A. Yes.

Q. You don't believe, therefore, in the government of the United States, I assume? A. I don't believe in any government. I have no particular reason as to anything against the Government of the United States; I am against all force of any character, and I do not give any particular thought to whether it is the United States Government or any other government.

Q. I mean in your belief against governments, you include the United States? A. I include all governments.

Q. Cannot you answer that? That is a very simple question? A. I include all governments, and naturally the United States Government.

Q. Do you believe in obeying the laws? A. Well, not a law that is based on a violation of my principles and on the use of force.

Q. So that if the law is not satisfactory to you, you believe you needn't obey it? A. If the law is not satisfactory to me.

Q. If you do not think the law is as it should be, you think you can disobey it? A. Yes, if any law is against my absolute thought, my character or anything, I can disobey such a law.

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Q. You believe in disobeying so-called registration law? A. May I ask what is meant by the word "disobey"?

Q. Refusing to comply with its provisions. A. If I am to——

Q. You are an intelligent man. Answer yes or no. A. I will answer if I was asked, of course, but I asked you—I don't care whether it was a law made by any man, but if it is a law that is absolutely against my nature, which required me to kill—and I will not kill—I rather die, I rather be shot myself than take a gun and go and kill anybody else, and I don't care who made that law, whether by one individual or by 100 individuals——

Q. You belong you tell us to the No-Conscription League? A. Yes, sir.

Q. That, I assume, has some doctrines or principles, hasn't it? Is that correct? A. Well, the League has no principles outside, that is, it is opposed to murder, that is, they are conscientious objectors and conscientious even to the point of death.

Q. Do you know that there was a law passed that became effective on the 18th day of May, 1916, requiring, among other things male persons between the ages of twenty-one and thirty-one to register; did you know that? A. I know that, I have heard of it.

Q. That is an easily answered question. Do you know that such a law or laws were passed, and if you knew such a law was passed, would you obey it or not? A. That means I should join the army?

Q. No, that means that you should register. A. Register? Yes, I know that.

Q. You know that? A. Yes.

Q. Is that one of the laws that you do not believe in? A. Yes.

Q. That is? A. Yes, sir.

Q. Is that one of the laws that you think you are at liberty to disobey? A. Yes, I think so.

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Q. You do think so? And is that one of the laws in regard to which you think you have a right to ask other people to disobey? A. Well, I do, yes; whether I have a right——

Q. Is that one of the laws that you think you have a right to advise others to disobey? A. What I want to ask, what right is referred to? There are various definitions of right, I don't know what right is referred to.

Q. I am using the word in a very simple and popular use. Is that one of the laws that you think you are privileged to advise other people to disobey?

Mr. Weinberger: With all due respect to the Court I must object to the form of the Court's question.

The Court: You may make your objection; it is overruled; and you may have an exception.

Q. Will you answer the question, please? A. I say that it is my natural right, and so I feel that I shall not kill.

Q. I am not asking you what you did, Mr. Becker, I am asking you, as you have been asked in response to questions of your counsel and as you informed us of your views, I am asking whether if part of your views is that you are privileged to tell other people not to obey the law recently passed requiring registration as preliminary to the selection of people for the army? A. Yes, I think I do.

Q. You think you have that privilege? A. Yes.

Q. And if I understand you correctly you think that you have the privilege to advise other people to obey no law which you think is not right? A. I am only concerned about the law which directs to take human life, and if that is the law I say I will go against any law and will agitate against any law if it is about taking life. I am opposed to taking life, and I will say to any man or any individual

that this law is higher than any other law on earth though man made.

Q. I understand. Your idea is that your own idea about it is higher than the law that the Government has laid down? A. You mean the law about——

Q. About registration? A. No, I have not said anything about registration. I will not obey the law to take up arms to kill any man and I say this law is higher than any other law and it makes no difference as to it whether the law is made by men in Russia it will——

Q. Will you please answer my question? You think, and you have told us, that you knew that there was a law passed requiring that certain male persons should register. You understand that, don't you? A. Yes.

Q. And you knew that that law was a part of a plan by which ultimately a certain number of men should be selected for service in the army and navy. You understood that? A. Yes.

Q. And you disbelieved in both those laws, is that correct? A. Yes.

Q. And, as I understand you, you feel at liberty to, and have felt at liberty—I am not saying what you did—but you do feel at liberty to advise any person not to obey it?

Mr. Weinberger: Might I respectfully object to your Honor's question in that form?

The Court: Certainly. You may have an objection and the objection is overruled; and you may have an exception.

Q. Do you understand my question? Read it to him, Mr. Kidder. (Question read by Reporter). Is that right? A. Yes.

The Court: You may go on.

By Mr. Weinberger.

Q. Have you told anyone not to register? A. No, I did not.

Q. On the 31st day of May, did you tell anyone not to register? A. That was the meeting?

Q. Yes. A. No, I did not, I did not say so to anybody.

Q. Did you have any agreement with anyone to go around telling people not to register? A. I had no agreement with anybody. I did not see anybody there.

Q. You sat down and listened to the speeches of the meeting? A. Yes, sir.

Q. And on your way out you went to get your package? A. Yes, sir.

Q. You admit, of course, that you went to this meeting pursuant to an agreement of a Committee of the No-Conscription League to give out Exhibit 1 (showing paper to witness)? A. Yes.

Q. And someone else was going to give out Exhibit 2? A. I don't know anything about anyone was to give out those. I had those there simply and only to advertise the meeting; and we had first the permission—I want to say to the gentlemen—therefore, I say, I would go there and give it out in the committee, as I understood they were to meet there, because they have other men inside to do with that, and I was to give them out outside. When I inquired for the committee the man said anyone coming there they would be told to go away, and then I was told that I was to check my bundle, which I did and went inside and listened to the speeches. And when I had gone inside and listened to the speeches and I came out and I got my bundle or package at the check room, and I did nothing that was illegal and nothing that should have been so considered.

Q. The mere fact that you believe that we can get along without government, or that you believe

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that no man or government has a right to make you kill, has not led you to tell people to refuse to register? A. Not on that occasion. I have not spoken to anybody.

Q. Or at any other occasions before the 31st day of May? A. I have not spoken on that occasion, but I have certainly spoken to my friends and I certainly would consider myself a criminal if I would not tell them that it is a most unhuman thing to kill and they should not kill. I do say that and I do not appeal to anyone as to what I can speak about either.

Q. Mr. Becker, it is not whether you told your friends in discussion not to kill, but, of course, the Bible says the same thing, and the question is as old as the world——

Mr. Content: Does he believe in the Bible?

Mr. Weinberger: There are certain truths in the Bible that we believe, that are found in the Bible.

Q. Did you tell anyone to refuse to register? A. Not that evening, no.

Q. Or any time before that? A. No.

Q. Did you have any agreement with anybody? A. No, not at all.

Q. Did anyone there—or with anyone there to tell others not to register? A. Not at all.

Q. The only agreement you had is with your committee, to give out people's Exhibit No. 1? A. To advertise the meeting.

Q. And you did advertise the meeting? A. Yes, sir.

Q. And you did believe in Government's Exhibit No. 2; is that a correct statement of your principles? A. If I did believe in what?

Q. In Exhibit 2, the language, that is the statement of the No-Conscription League? A. If I do believe in it?

Q. Yes. A. Yes, I do believe in it.

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Q. That it is improper to kill? A. Yes, sir.

Q. And that no Government has a right to make you kill? A. Certainly.

Q. And that no Government has a right to force you into the army to make you kill? A. Certainly; that is my belief.

Q. You do not believe in any killing? A. No, sir.

Q. You do not believe in any government, that it has a right to make you go and kill anyone? A. No, sir.

Q. And that is the reason you joined the No-Conscription League? A. Yes, sir.

Q. That is the reason you had appeared there at that meeting? A. Yes, sir.

Q. And that is the reason why up to the present time you do not fight in any army? A. I would not fight in any army, that is the reason. Might I state here, that I have nothing to do with any Pacifists, and that while a Pacifist has some principles that are the same, some of their principles are against those that I believe in; and I am against any law that will make this country enter into the war, chiefly, whether directly or indirectly, or that will make any country enter into any war and I am opposed to them because they believe in force; and it doesn't make any difference to me whether the United States is right or wrong, in principle, this is something that I have nothing to with, this Pacifist movement, because the questions are altogether different. In connection with their principles they believe in force to a certain extent, but we do not believe in force. I am not in sympathy with this Pacifist movement in that regard.

Q. Now, in your statement of your position, did you tell any officer or guardsman that you did not know what you were giving out at that meeting or what you had in that pamphlet? A. I certainly did not say that.

Q. Had you given out those circulars at any other meeting at any other place, Government's Exhibit

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1? A. I had no occasion yet to give them out, so I did not.

Q. You did not give any out at Madison Square Garden? A. No, certainly not.

Q. And you are positive that you did not tell these officers who arrested you, that you did not know what was inside that leaflet? A. I did not see that officer before, I stated that plainly, that I never seen that officer or ever spoke to him.

Q. You did not tell whoever it was that arrested you, that you did not know what was stated in that leaflet? A. No, I did not.

The Court: Is officer Henry here?
(An officer comes forward.)

By the Court.

Q. Did you ever see this officer? A. That is the man who arrested me.

Q. What officer is it that you mean you did not see? A. I mean the man that told me that I had told him that I drew that cartoon.

By Mr. Weinberger.

Q. Officer Finan? A. Yes.

Q. You never told Officer Finan you were Maurice Becker? A. Never. How can I say it? I am not him.

Q. You never told Officer Finan you were Maurice Becker? A. Never. How can I say it? I am not him.

Q. You know Maurice Becker? A. Yes, sir.

Cross-examination by Mr. Content.

Q. How old are you? A. 32.

Q. You stated that you lived in 119 East 102nd street? A. Yes, sir.

Q. And is that correct? A. Yes, sir.

Q. You were asked that same question before the

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United States Commissioner, were you not? A. Yes, sir.

Q. And you refused to answer, didn't you? A. Yes, sir.

Q. Why?

Mr. Weinberger: I object on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled, it goes towards giving us a consecutive picture.

Mr. Content: This is his previous testimony.

Q. Why did you decline to answer? A. I did not give any evidence, I did not want to disturb my people at that meeting, but after, I changed my mind, and I gave my address.

Q. Where were you born? A. In Russia.

Q. Are you a citizen of the United States? A. No, sir.

Q. You were asked this question by me before the United States Commissioner: "Q. Are you an American citizen? A. I refuse to answer." Did you answer that to me then?

Mr. Weinberger: That is objected to on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Did I say I refused to answer?

Q. I am reading the question and answer, and if I read it incorrectly you tell me. This is a question by me: "Q. Are you an American citizen? A. I refuse to answer?" A. I refused to answer all questions. Not only this question but all questions, and when I come to answer that question, I answered, "I am a citizen of the world."

Q. And I asked you whether you were an American citizen, and you stated, "I am a citizen of the world." A. I am a citizen of the world.

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Q. You have never taken out citizenship papers, have you? A. No, I do not believe in taking out any citizenship papers.

Q. When did you come to the United States? A. Eleven or twelve years ago.

Q. What year? A. Well, I think it must have been 1906.

Q. What month? A. I cannot tell you that.

Q. What season of the year was it, Winter or Spring or Fall?

Mr. Weinberger: I object on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Weinberger: Exception.

A. That was, I guess on the beginning of Spring.

Q. In the beginning of the Spring? A. Yes.

Q. What ship did you come on? A. I don't remember.

Q. Don't remember that? A. No.

Q. Were you an anarchist when you entered the United States? A. I was an anarchist when I entered the United States.

Q. You were? A. Yes, sir.

Q. You have no interest in the Government of the United States? A. I have no interest in the Government.

Q. You don't owe any allegiance to the United States?

Mr. Weinberger: I object on the ground that it is incompetent, irrelevant and immaterial.

Mr. Content: I don't think that is so. Mr. Weinberger asked a lot of questions on this subject.

The Court: In view of the direct, I will allow the questioning.

A. I don't know what is meant by "allegiance."

Q. Don't you know what "allegiance" means? A.

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No, I want to understand what is meant by the word "allegiance."

Q. You don't feel that you owe any obligations of any sort to the Government of the United States, do you? A. I owe no obligation to anybody.

Q. Do you feel that you owe any obligation of any sort to the Government of the United States? A. I said that I did not feel I owed any obligation to anybody.

Q. Does that include the Government of the United States? A. Counsellor, that is a question of conscience, if you will tell me now if that is a——

Q. You are an intelligent man, Mr. Becker, and you can answer that question? A. There is no distinction, now, there are many things that are good in the United States and in other countries and in the laws of the countries I suppose, but as I said before I am a citizen of the world and have no allegiance to this any more than to any other Government, and when it comes down to that it is a question of conscience, and I do not accept anything that is against my conscience.

Q. You place yourself above the laws of the United States, don't you? A. What do you mean by "above the laws?"

Q. You feel that your conscience is higher than the laws, don't you? A. I feel that I have nothing to do with the laws. If it is a question of conscience, I would not kill if I have to be put to death, I do not do anything of that kind, it is entirely against any law of my nature.

Q. You belong to the No-Conscription League? A. Yes, sir.

Q. When did you join that? A. Well, I cannot tell that.

Q. Why? A. I don't care to answer this question.

Q. Why don't you care to answer this question? A. It has nothing to do with this case, when that date was.

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Q. I asked you when you joined the No-Conscription League and you said you were a member, this is on your direct examination to Mr. Weinberger, you said that to him on direct examination, volunteered it. Now, on your cross-examination, I ask you now when you joined it? A. The time when the law, or when the beginning was about conscription.

Q. When was that, about? A. Well, probably a couple of months ago.

Q. A couple of months ago? A. Yes, sir.

Q. Isn't it the purpose of the No-Conscription League, of which you are confessedly a member, to resist conscription by all means in your power? A. Yes, sir.

Q. And isn't it the purpose of the No-Conscription League to give aid to and succor people who come into conflict with the Government of the United States? A. To do what?

Q. Isn't it the purpose of the No-Conscription League to give assistance to people who come in conflict with the Government through the enforcement of the law? A. Yes, that is stated on that circular plainly.

By the Court.

Q. What is your occupation, by the way? A. Ladies' hats.

Q. How long have you been in that business? A. Since I am in this country.

Q. Were you employed at the time of your arrest? A. No.

Q. How long since you have been employed? A. A couple of weeks.

Q. A couple of weeks, and that is all? A. Yes.

Q. And with whom were you employed? A. Kirschfeld & Sons.

Q. How long have you been employed by them? A. Well, I was employed—that is a season work, and I was employed one season and then another season and then another season.

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Q. Cannot you answer my question? A. That is all that I have been employed. I am working on a season work and a season work, when the season is over, stops, and I have nothing to do; if the work of that season is bad, then we have to stop work; but for these people I was working several seasons, for these men.

Q. How many seasons have you worked for Kirschfeld Brothers? A. Probably four or five seasons.

Q. Whom did you work for before that? A. I cannot tell just now. I really have worked for so many men I cannot remember, as it is season work and each man works that season and then is an end, and again he may work for the same man or another man the next season. I work until the season is finished and then I have nothing to do, or else I work for another man whose season perhaps is longer or is just commencing. Each line of work has a different sort of apparatus and some require the work of some men all the time, but the greatest part of them are only working part of the time. I work for this man one time and another man another time, so I really cannot tell who they are.

Q. How many different persons have you worked for since you have been in this country? A. Oh, I could not tell you that.

Q. A dozen? A. A great many, I think more than a dozen.

Q. More than a dozen? A. Yes.

Q. Two dozen? A. Well, about.

Q. Well, then, as I understand it, you have been here then about eleven years and worked at about two dozen different places; is that right? A. I want to emphasize that we have nothing to do with looking for a job. When our season finishes, we go to the union and the next season, why, I get a place, even if I want to go to the same manufacturer, I cannot do so, whether I want to or not I have to go where there is an opening. They do not ask us those

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questions, and wherever there is a vacancy, they place us in them.

By Mr. Content.

Q. Now, Mr. Becker, you gave to Mr. Weinberger on direct examination a rather elaborate explanation of how you went to the Garden with the idea of distributing leaflets, and you understood you were not supposed to give out any leaflets in the meeting, and that you talked this thing over on the outside. You remember your testimony on your direct examination, don't you?

Mr. Weinberger: Ask him a question.

Q. You remember the testimony that you gave Mr. Weinberger about checking your bundle; you remember that, don't you? A. If I remember?

Q. You remember about checking it, don't you, you know what I am talking about? A. (No answer.)

Q. Look here: On direct examination you told Mr. Weinberger how you went over this proposition and about your being on the committee to give out these things? A. Yes.

Q. And then why you did not give them out? A. Yes, sir.

Q. You remember Mr. Weinberger asked you those questions and you stated that to him? A. Yes, sir.

Q. You were a witness before the United States Commissioner, weren't you, before Commissioner Hitchcock? A. Yes, sir.

Q. Let me ask you this: That the first time you ever mentioned about checking your bundle was here today, wasn't it? A. Well, I was not asked. I was asked a couple of questions, and there was no going into my case at all in there.

By the Court.

Q. Now, you say that you went down there as a member of a committee. A. Committee of the No-Conscription League? A. Of the No-Conscription League.

Q. And were any of these co-defendants on that committee? A. Only one.

Q. That was whom? A. Kramer.

Q. Mr. Kramer? A. But I did not see him there.

Q. But he was a member of the committee? A. Yes, he was a member of the committee.

Q. You got some sort of instructions from some place to go down there, didn't you? A. Yes.

Q. Where did you get those instructions? A. This I could not tell.

Q. I am asking you? A. I agreed with the committee that outside we should give out these circulars after the meeting; they made a commotion——

Q. Who agreed to that? A. The committee.

Q. Who is on the committee? A. On the committee? Why, a few fellows, not the ones that are here, only Kramer, and I never seen him there, and the other fellows I never seen in my life.

Q. Kramer and some other people? A. Yes.

Q. You agreed that you would give out circulars at this meeting at the Garden? A. To advertise the meeting.

Q. The circulars that you speak of as advertising the meeting are Government's Exhibit 1, that big one? A. Yes, sir.

Q. This Government's Exhibit 1. Had you ever seen that before that night? A. I had seen it.

Q. Where had you seen it? A. I did see it up at the No-Conscription League.

Q. Where is that? A. I cannot say what the place is.

Q. You will have to answer my question. Where is it?

Mr. Content: The address is right on here.

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A. That is the place.

Q. Where? A. Where the circular comes from, where the address is.

Q. What is the address? You know, you have been there, you say? A. The address is 20 East 125th street.

Q. How long before the Garden meeting did you have an agreement with Kramer and the other members of the Committee to give out circulars?

A. A few days.

Q. How long before the meeting was Exhibit No. 2 printed, that is this paper (handing same to witness)? A. This I cannot tell.

Q. How long before the meeting did you see Exhibit No. 2? A. I seen them quite a long time.

Q. Quite a long time. Did you see it at the meeting at which you agreed to give out circulars in the Garden if permitted? A. Well, never—I did not see to that meeting any of the circulars; we were only to give them—you see when we got to the meeting—

Q. Where did you first see Exhibit No. 2, more circulars like it? A. I told you I seen it a long time ago.

Q. Before the Garden meeting, didn't you? A. Yes.

Q. Where did you see them? A. In the same place.

Q. Same place? A. Yes.

Q. Now, where had you been before you went to the Garden that night? A. Where I had been?

Q. Yes. A. Home. I went from my home.

Q. What circulars did you take with you? A. The big circulars—the advertisement circular.

Q. Did you take that Exhibit 2 with you? A. No. I had a few in my pocket, they were a few of them there in my pocket.

Q. When you went to the Garden meeting, you had a few of Exhibit No. 2 in your pocket, as I understand you? A. Yes.

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Q. How many did you have? A. I don't remember the number, about ten or fifteen I had in my pocket.

Q. What pocket? A. This pocket (indicating).

Q. Your inside pocket? A. Yes.

Q. When you got to the Garden meeting, what did you do with these No. 2 circulars? A. I didn't do anything with them; I didn't even remember that I had any when I came to the place where I was arrested, not until I came to the place where I was searched, where they searched my pocket, then they took them out with all my papers, they took a few of these; there was plain papers, newspapers and pamphlets and this here.

Q. How many numbers in all did you have of this big circular? A. Well, I cannot tell, probably fifty or one hundred, I cannot tell, I did not count them; I had just a little bundle, you see, and I was to have it to give it to the committee.

Q. Whom did you give those numbers to? A. I checked them.

Q. Where did you get them from? A. I got them from a friend of mine?

Q. What is the name? A. The name? I cannot tell you the friend's name.

Q. You mean you won't tell? A. No.

Q. Well, you must tell. A. I must not.

Q. You refuse to tell? A. I refuse to tell; I won't tell on anybody that might get into any trouble from me, as I was supposed to bring up the circulars, I was supposed to bring them along to the meeting and show them.

Q. Your friend prepared these circulars, did he not? A. Yes, certainly.

Q. When did he bring them there? A. I did not ask him when he brought them up, he gave to me, that is what I was to be present for to do with them in the Madison Square Garden.

Q. Answer my question and don't go on with such a lot of things that are not in answer to my

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question. Where did your friend give you these circulars? A. In my home.

Q. In your home? A. Yes, sir.

Q. And you thought there was about fifty of them, did you? A. About fifty circulars.

Q. Fifty circulars? A. I don't know; fifty or a hundred, that is a small bundle of them, I don't know how many there are in the bundle.

Q. You estimated them? A. How many there are I don't know because it is thin paper, I don't know how many there are.

Q. You guessed that the bundle had how many, fifty or one hundred, from fifty to one hundred? A. Yes.

Q. That is the small bundle? A. That is the bundle that I was to take up there.

Q. Did you look through the bundle to see what was in it? A. Did I look through the bundle? I did look through the bundle.

Q. You looked all through it? A. Only the big circulars.

Q. Did you look all through the bundle? A. Yes.

Q. You looked over every single one? A. I didn't look over every circular. I opened it up but I read the last one, the last line is here, and when I see what it was I went to Madison Square Garden with them to meet the committee and to see if I could give the circulars out.

Q. When you got to Madison Square Garden whom did you see? A. When I got to Madison Square Garden there was a great crowd there and I could not get in.

Q. You could not get into the Garden? A. I got into a private entrance, the only way I could do was to get on the floor that way, and I did not know which way to go as I was headed for this room, to attend this meeting of this Committee where our men were to be. The place was so big I did not know where to go and so I asked the girl where can I see the Committee. She pointed, she took me

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along, and brought me over to a man that was in the room, and I was supposed to go, and I told him, to the committee's room and to meet my committee there and he told me there was nobody there, there would be nobody there, and there would be no committee meeting and nobody will get to it; because we won't allow you to give out any circulars. He took them that I had away from me and stated—

Q. Who took them away? A. The man on the floor. I said, "Why do you take them away, take away the stuff from me?" He said, "All right, I know what I am doing, you will get them back when you go home."

Q. So when the soldiers came around where you were you had the circulars, except these that were in your pocket? A. The soldiers who arrested me?

Q. Yes. A. When they arrested me?

Q. When they arrested you. A. When they took them out of my pocket, these circulars.

Q. The soldier arrested you just as you were taking out your circulars from this place where you checked them with this red haired girl, did you say she was red haired? A. No. She took me over to that man, she called over this man and he took away from me my bundle, and after I came back he gave me back my bundle—not the same man, I did not see the same man again.

Q. What kind of a check did he give you? A. I didn't get any check. He said I don't need any check, you can get it very easily when you come back here, you can get your bundle, that is how everybody did.

Q. It is just as you came down from this check room that the soldier arrested you, come up to you and arrested you, was that it? A. Yes.

Q. What had you been doing in the Garden after you got inside? A. I was sitting, listening to the speeches.

Q. Whereabouts? A. I was on one side of the balcony, I cannot tell what side it was, what seat it

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was, because I don't know where I sit as compared to the streets, but I was right in back of the speakers; here are the speakers (illustrating).

Q. Had you seen Kramer that evening? A. I did not.

Q. When had you seen Kramer last? A. Last, a few days ago.

Q. I mean before that meeting? A. Before that meeting I seen him a few days ago.

Q. At that meeting at which you and Kramer were both present it was agreed to distribute circulars at the Garden meeting? A. It was agreed on condition that we first to call a committee and anybody who might come to the meeting we were to have them give out these; we wanted to get our permission to give these circulars out, and then we would give them out on the floor and it was agreed that they should meet there in that particular room, the committee room of the Garden and from there we were to go with the circulars, but they did not allow us to meet in that room, so we did not meet there and there was no agreement of the committee other than that. We were to meet there and the circulars were to be divided up and then we were to go and give them out.

Q. You were to divide up the circulars? A. Yes. They did not give us any permission, and I don't know whether or not anybody went out to give any out, I did not see them do so.

Q. There was an agreement between you and Kramer and these other people that if you got the permission of the people running the Madison Square Garden, that you could distribute circulars? A. Yes, sir.

Q. Was there any agreement as to what room you were to go to there? A. There was no agreement as to that.

Q. Or as to what hour you were to get there? A. No agreement as to the hour. Each one worked under the direction of the committee and we were

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to meet the committee there and they were to come into that room and get directions.

Q. That is, who was going to meet? A. The committee was going to meet in this meeting room.

Q. Your committee? A. My committee was going to meet when the meeting starts.

Q. You had an agreement with that committee that you were to meet in Madison Square Garden?

A. Yes, sir, we were.

Q. And you would find the other members of the committee and the committee in charge of the Madison Square Garden? A. Yes.

Q. So that the agreement that the committee made was that you and Kramer and the other people were to go down there and meet together, the several of you. You understand me? A. Yes.

Q. How many were there on that committee besides Kramer? A. Oh, about eight.

Q. And there was a committee of ten altogether, or eight or six, which was it? A. No, eight altogether.

Q. That is, there were the six of them besides you and Kramer? A. I did not see Kramer even; and this committee affair that was supposed to go along and as we had agreed upon, did not meet, because we could not have this meeting room and I could not bring in my circulars that I had agreed to bring in there as my part of it, and so I did not see Kramer and I did not go on with the thing as we had agreed to.

By Mr. Content.

Q. I would like to ask one more question: You say that you have—it was your intention to give out the large circulars, Government's Exhibit 1? A. Yes, sir.

Q. Was it your intention to give out any of these Government's Exhibit 2? A. No, not that one.

Q. You had them in your pocket, they had already been prepared, hadn't they? A. I beg your

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pardon. I did not have them in my pocket only a few of them, and I did not take them along in my pocket knowingly, but when my papers was taken out and I was charged with this, they took those out too because they found them in my pocket. I did not know that I had them.

Q. I call your attention to the fact that in the bundle of papers that have been placed in evidence here there are a considerable number of this Exhibit No. 2 that have been found, there were a number of this Exhibit No. 2. A. I beg your pardon. It could not have been in there at that time, because it was a plain small little bundle, and it had been in my pocket, among my papers a long time and I had them in my pocket squeezed up for a long time.

Mr. Weinberger: That bundle was not rolled, was it?

Mr. Content: No, not rolled, I rolled it up.

Redirect examination by Mr. Weinberger.

Q. Your bundle was flat, wasn't it? A. Yes, sir.

Q. So it could be put away in a small place, these are small circulars, I take it? A. Certainly, I had a small, a little bundle of them.

Q. Did you know either Walker or Sternberg before they were arrested that night? A. I never seen them.

Q. Were they on any committee? A. No.

Q. That you knew of? A. No, sir.

Q. Were they members of the No-Conscription League? A. No.

Q. Did they ever attend any of your meetings that you know of? A. No.

Q. Do you know if Mr. Kramer had been given out as being one of the committee, you knew that? A. Yes, I knew that.

Q. You knew he was going to give out circulars? A. Yes, sir.

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Q. Was there any instructions or anything said that your committee should hold a committee meeting of the No-Conscription League and to be instructed about telling the people at Madison Square Garden not to register? A. No.

Q. Did you ever tell anybody on any other occasion not to register? A. No.

Q. Any individual or in any speech? A. No, we had distinctly no such thing. We went to the Garden and were going to hold our meeting when we could get there, those of the committee that could come. We held several meetings at which volunteers were asked for and urged to come, and we told them to come to this committee several times the matter was discussed and as anarchists, we did not say to anybody what they shall do. I would not direct, but I would urge that they do what we wished done. That is also a principle of our propaganda that it is done by the committees, who are independent, and we do not say directly to them that they must do so and so.

Q. It is a general thing, right in your propoganda, to state what you believe? A. Yes, sir.

Q. And then the other fellow can do as he pleases? A. Yes.

Q. But there was no agreement at any time was there, between you and Kramer or anybody else, to tell people not to register? A. Nothing.

JOSEPH WALKER, one of the defendants, called as a witness in behalf of the defendants, being first duly sworn testified as follows:

Direct examination by Mr. Weinberger.

Q. Mr. Walker, are you a member of the No-Conscription League? A. No, sir, I am not.

Q. Are you an anarchist? A. No, sir.

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Q. Do you belong to a labor union? A. The Printers' Union.

Q. What labor union do you belong to? A. The International Printing Pressmen's Union.

Q. What name? A. The International Printing Pressmen's Union of North America.

Q. How long have you been a member of that labor union? A. About 18 years.

Q. Did you have any agreement with anybody on the 31st day of May, to give out—before you went to the meeting? A. I did not.

Q. To give out circulars? A. I did not.

Q. Did you have any agreement or any arrangement with anybody on the 31st day of May to tell people not to register? A. I did not.

Q. Did you know either Kramer or Mr. Becker before you went to that meeting? A. I did not know them.

Q. Had you ever seen them before? A. No, sir.

Q. Had you ever served on any committee that he was on? A. No, sir.

Q. That you know of? A. No, sir.

Q. Are you of conscription age? A. I am.

Q. Have you served in the United States Army? A. Yes, I was in the United States Army.

Q. The Army? A. I was in the United States Transport *Kilpatrick*, and I was on the United States Gunboat *Crook* in San Francisco. I was in the *Kilpatrick* in New York, which sailed from New York to Port-au-Prince.

Q. Are you opposed to the Conscription Law? A. Should the United States get in difficulties and they need men, I would be willing to go.

Q. I mean, have you any feeling now against the law? A. Absolutely none.

Q. Or against registration? A. Positively not, no.

Q. Have you taken part in any No-Conscription meetings? A. Not with the exception of the one at the Garden.

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Q. That was not a No-Conscription meeting except they spoke about conscription? A. No.

Q. Have you ever advised anybody not to register? A. No, sir.

Q. Were you part of any committee as far as you know to advise people not to register? A. No, sir.

Q. When you were arrested, did you have any circulars, either Government's Exhibit 1 or 2? A. Well, I had a bundle, but I really didn't know what it contained; that was what I got at the meeting; this man was handing them out and he handed them to me and I looked at them, it was the blank side of them that was turned towards me, and I turned it upside down from what it was when I received it.

Q. Did you know Sternberg before the meeting? A. Never seen him.

Q. At what time of the evening did you get the pamphlets or leaflets? A. Well, I came from work at six and I got into the Garden at 8.30. I got in the front about nine o'clock, I suppose, and I went upstairs and sat down and when I got pulled, I came downstairs on my way out, I got to the one flight up above the ground floor and I saw a bundle of these leaflets which was inserted in my hand by somebody and the instant that they were inserted there I was seized right away, immediately.

Q. Did you give out any of the leaflets to anyone? A. I don't know what I did. There was lots of them loose, and there was some grabbing, and they started to spill.

By the Court.

Q. What condition were they in? A. The leaflets were loose. They started to spill when they were handed to me to give out, but I didn't issue one of them.

By Mr. Weinberger.

Q. When you were arrested did Sternberg say to you when he was brought up: "Did they get any

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of the stuff on you"? A. No, Sternberg cannot express himself in the English language.

Q. Did he speak to you in English at any time?

A. Not to my recollection.

Q. Did you say to him, "Yes, they got the stuff I had, did they get it on you?" A. No.

Q. Did you say to him, "Did they hear you tell people not to register"? A. Did he say to me, Mr. Weinberger?

Q. Yes, or did you say it to him? A. No, sir.

Q. Was any expression like that used at all? A. Not a bit.

Q. Between you two? A. No, it was.

Q. Or between Kramer and you? A. No.

Q. Or anybody else? A. Of course, the pamphlets which were issued——

Q. I say, was anything said between you and Sternberg? A. No.

Q. About "Did they hear you tell people not to register" and you said "Why, they must have heard because there is a lot of detectives around"? A. No, sir.

Q. And did he say to you, reversing it around? A. No, sir.

Q. Did you talk to him in English at any time?

A. I tried to converse with him in English, but he could not seem to understand me.

Q. You talk Yiddish yourself? A. Very, very little.

Q. Do you understand Yiddish? A. I understand it better than I speak it.

Q. While you have been in jail, while you were both under arrest, before you were arrested either, he did not talk English to you? A. In jail?

Q. Yes, in jail? A. Well, he makes himself understood a little bit in English in jail.

Q. Did you go to this meeting at Madison Square Garden by yourself? A. I did, with the intention of hearing Hillquit.

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Q. Did you make any arrangement with anybody to meet you there? A. Yes, sir, appointed upstairs but I lost him.

By the Court.

Q. You said something—I may have misunderstood you—that you had an armful of these sheets of papers given you by Kramer? A. No.

Q. What was that? A. That was these things, that is, these leaflets.

Q. You mean Kramer gave these to you? A. Yes, sir.

Q. When and where? A. At Madison Square Garden.

By Mr. Weinberger.

Q. At any time at that meeting were you, Sternberg or Kramer and Becker together up in the balcony? A. Only once up in that gallery when I first came downstairs, it was Kramer that I met, was the only one.

Q. Downstairs where? A. The floor, one flight above the ground floor.

Q. At any time were you up over the balcony, one from the roof, with Sternberg, Becker and Kramer? A. At what time?

Q. Were you all there? A. No, only Kramer and I; that is where I came and met him and had a conversation with him on that one balcony.

Q. And Kramer did not give you any leaflets and say where you should go with them, did he? A. He issued them to me. He didn't tell me where or what to do with them; I was taking them away at the time and was going to give them out when I got downstairs.

Q. On your way down? A. When I got downstairs.

Q. You were on your way out of the building at the time? A. I was on my way coming down when

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the pamphlets was issued to me by Kramer. I was right at the head of the stairs there, and I was on my way out.

Q. At the end of the meeting? A. No, it was not at the end of the meeting; Hillquit was speaking at the time.

Q. Where were you? A. Right at the head of the stairs.

Q. At the time when you were going out of the building? A. I started to go out.

Q. Had you had any arrangement with Kramer to meet him there? A. No arrangement.

Q. Or to give out pamphlets? A. No.

Q. And did you talk to him and did he issue to you and show you what to do with these pamphlets? A. When I first met Kramer I seen the pamphlets issued to another fellow, and he was giving them to us, and I walked up there, I wanted to get one of those pamphlets off Kramer.

Q. So if the officer states and some of the soldiers that you, Sternberg, Kramer and Becker were up in that gallery and each one getting bundle and Kramer pointing where you should go with them, that is not true? A. That is not true because when I met Kramer, Kramer—Becker was not with Kramer when I met him.

Q. Nor was Sternberg? A. Nor was Sternberg.

Cross-examination by Mr. Content.

Q Now, Mr. Walker, you say that the pamphlets that were taken from your possession by Mr. Henry—you know who I mean? A. Yes, sir.

Q. Were given to you by Kramer; is that correct? A. Yes, sir, they were given to me by Kramer and the Commissioner, I didn't—

Q. Wait a moment, wait a moment. Will you answer my question, please? Were they given to you by Kramer? A. Given to me by Kramer.

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Q. I call your attention to this conversation: "Do you know the man you obtained them from," referring to the leaflets. "A. In fact, I could not very well." Did you make that answer to that question? A. Not to me in there I did not.

Q. This is cross-examination by me. A. In here?

Q. Before the Commissioner, Commissioner Hitchcock? A. Oh, I said that before the Commissioner and what I meant——

Q. Listen to my question and answer whether you made that answer that way or not, that is all I ask?

A. Yes, sir, I said that to him.

Q. Will you listen to what I say?

Mr. Weinberger: Please wait.

Q. Wait and listen to this. I will read it to you again. Did you make this answer to this question: "Q. Did you know that man you obtained them from? A. In fact I could not very well." Did you say that? Yes or no. A. Yes, I said to that fellow when there was two of them——

Q. Did you say that? A. Yes.

Q. "Q. Do you know him? A. Not personally, no." A. The other fellow I didn't know.

Q. Will you please see here a minute and listen? Did you make that answer to that question? A. To that effect I did, yes, sir.

Q. "Q. Did you ever see him before? A. No; I don't recall his face at the present moment." Did you make that answer to that question? A. Yes, sir.

Q. "You say this man thrust them on you? A. Yes." Did you make that answer? A. That was the other fellow, yes; he threw some in my hand too.

Q. Before the Commissioner when you were asked where you obtained the pamphlets from, you didn't say Kramer, did you? A. No, but I received some from another fellow, from the other fellow there.

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Q. But you say now before this Court that you received the pamphlets from Kramer, do you? A. Yes, those are the ones I received, yes, sir.

Q. You said, I asked you the very first question, whether the pamphlets taken from you by Henry were the ones that you received from Kramer and you said yes, didn't you? A. Yes, sir.

Q. And before the Commissioner, when you were asked where these same papers were gotten from you said from a man you didn't know, is that correct? A. Yes, sir.

Q. You know who Kramer is now, don't you? A. Yes.

Q. But you say you didn't know Kramer? A. I didn't mention anything there.

Mr. Weinberger: I concede that he testified that he didn't know Kramer before that meeting.

A. (Continuing) Before that meeting I did not.

Q. I didn't ask you that at all, Mr. Weinberger! I simply ask you now whether you say you got these pamphlets that were taken from you and that were offered in evidence from Kramer and your answer was yes, is that right? A. Yes, sir.

Q. Before the Commissioner when you were asked the same question you said you could not recall what the man looked like that gave them to you, is that right? A. Yes, sir.

Q. And Kramer was sitting right next to you in the Commissioner's room, wasn't he? A. Well, he was within two feet.

Q. He was within two feet of you, wasn't he? A. Yes, sir.

Q. Now, Mr. Walker, did Kramer ask you to give this out? A. No, sir, he did not have time to ask me, he just gave them to me.

Q. He didn't ask you to give them out? A. On that, I did not see what it contained on that picture at all——

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Q. Will you wait a moment, Mr. Witness, that is a very simple question, you can answer it yes or no. This is a simple question: Did Kramer ask you to give them out? A. No, he did not ask me to give them out.

Q. Will you look at me? Didn't he? A. Yes, sir.

Q. Didn't you tell me up in my office a few days ago that Kramer gave these to you and asked you to give them out? A. He gave them to me, he did not ask me to give them out.

Q. Did you say to me in my office that Kramer gave these papers to you and told you to give them out? A. He gave them to me.

Q. I asked you whether in my office you did not tell me that Kramer gave those to you and asked you to give them out? A. No, he gave them to me with the implication that I would give them out, he didn't have to ask me or to tell me to.

Q. You knew you were to give them out? A. I knew the moment I received the parcel that it was so considered.

Q. You tried to put the papers away? A. Yes, because knowing that they were loose papers and were handed to me I should naturally try to give them out but when I knew what they was—I didn't conscience what they was—I didn't want to give them out, and right then the soldier grabbed me.

Q. You told me you didn't know what it was? A. No, I didn't know it was unlawful until that.

Q. Why didn't you know that it was unlawful? A. On account of being seized by the officers and soldiers.

Q. So you didn't try to put them aside before you were seized? A. No, because the moment I got them, they were given to me with the blank side of them up and I turned them the other side around.

Q. You heard testimony that Kramer was arrested and that you were not arrested until after Kramer was arrested? A. Both was arrested together.

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Q. Both were arrested together? A. Yes, sir.

Q. At the very same moment? A. At the very moment, after he gave them to me, why, I had the pamphlets.

Q. You said that you worked on an Army transport. You did not take oath to the United States, did you?

Mr. Weinberger: I object on the ground it is incompetent, irrelevant and immaterial.

Mr. Content: Mr. Weinberger wants it to appear as though you were in the Army.

Mr. Weinberger: I say he worked on an Army transport.

A. I was only on a transport.

The Court: He may tell.

A. (Continuing) I was on the United States Army Transport *Kilpatrick*.

Q. You were not an enlisted man in the Navy?

A. Not that, no; I was work on a transport, an American transport.

Q. You were just like other sailors that were doing routine ship work? A. Certainly, yes.

Q. You didn't take any oath to the United States?

A. No.

Q. That is what I mean. A. I was on both of them ships.

By the Court.

Q. Let me ask you, Mr. Walker, where were you born? A. I was born in St. Louis; but I lived the biggest part of my time in London, a great deal I lived, quite a bit in London and France.

Q. You were born in St. Louis? A. Born in St. Louis in 1882.

Q. Were you employed at the time of your arrest? A. Yes, sir, I was at Bacon Brothers Print House, working on the day shift.

Q. Where were you living? A. 3 West 13th street.

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Q. Had you ever seen Kramer before that date?
A. I never knew Kramer before.

Q. Is that the first time you ever saw him? A. First time I ever saw him in that night, in that building, unconsciously I drifted in there, I never knew what in the world it was, I did not know it was that kind of a meeting.

Q. You never saw Kramer, or knew of this man before? A. No.

Q. That is the first time you ever saw him? A. Yes.

Q. Now, in justice to yourself, how was it that when you were before the Commissioner you said something to the effect that you did not recognize Kramer? You give your explanation. A. Gentlemen, excuse me, you know when they got me over there under oath I didn't know I was under oath before that, and when I found myself over in this place I am staying in Center street, anyway he talked about me, he had me so intimidated that I didn't know nothing; I am troubled with neurasthenia and perhaps I said something that I should not have said there.

Q. Is that your explanation? A. He had me so intimidated.

Q. We were talking about the time you were before the Commissioner. A. Yes.

Q. Were you sworn there? A. What do you mean sworn?

Q. Did the Commissioner take your oath before you answered a question? A. There was a whole lot done, you asked me if——

Q. You were put under oath there, down there, weren't you? A. I cannot quite recall directly, my mind was so shaken.

By Mr. Content.

Q. Were you sworn to tell the truth, the whole truth and nothing but the truth, before you testi-

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fied in your behalf before Commissioner Hitchcock?

A. I can't recollect.

By the Court.

Q. You say you can understand Yiddish? A. Not very well, very poor I speak it.

Q. But you have been able to understand it? A. I understand some.

Q. You are able to understand Sternberg? A. Sternberg—no, Sternberg cannot express himself in English language.

Q. I said Yiddish? A. Some things I can and others I cannot.

Q. I thought you said Sternberg could speak a little broken English. A. No, he cannot speak English, his English is very, very bad.

Q. Didn't you say something to the effect that since you have been in the Tombs, he made himself understood? A. Yes, some things. He said as such things as coffee and meals and so on, and to that effect naturally, but otherwise he cannot make himself understood.

Q. So you have never had any connection with any of these men before? A. No.

Q. And you never met them anywhere? A. Only up there, and over there in the front office.

Q. And when Kramer handed you these papers, did he make any motions to indicate anything of that sort? A. No, he did not because we were grabbed right away; they was given me with the intention of distributing, but I didn't, I didn't have time to.

Q. How do you know they were given to you with the intention of distributing them? A. They must have been, there was a bundle of them.

Q. There was a bundle of them? A. Yes, there must have been about thirty-five, I suppose, in there.

(Adjourned to June 12, 1917, 10 o'clock A. M.)

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New York, June 12, 1917, 10 A. M.

Trial resumed pursuant to adjournment.

Present:

The Court, counsel and jury, same as before.

HAROLD A. CONTENT, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. What is your full name, Mr. Content, and address? A. Harold Augustus Content.

Q. You are an Assistant District Attorney of the United States? A. I am an Assistant United States Attorney for the Southern District of New York; and I have also been a Special Assistant to the United States Attorney for the Eastern District of Pennsylvania.

Q. You were sworn, of course, as an Assistant United States District Attorney, to uphold the Constitution? A. I have taken an oath to uphold and support the Constitution and laws of the United States of America.

Q. And you are an attorney, duly admitted to practice in all departments? A. I was admitted to the Bar of the State of New York in October, 1911, and in the Federal Southern District of New York some time in 1912.

Q. You are familiar with the Constitution of the United States? A. I am familiar with it, I don't know that I am as familiar as you are.

Q. You are familiar with Section 4 of the Amendment to the Constitution which reads as follows: "The right of the people to be secure in their houses, papers and effects against unreasonable searches, and seizures shall not be valid and no war-

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rant shall issue upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." A. There have been no search warrants in this case.

Q. Are you familiar with that? A. I am familiar with that section on unlawful seizure.

Q. Did you see James J. Finan, the officer who made the arrest in this case? A. Did I what?

Q. Did you see him last night? A. I did, sir.

Q. Did you see Benjamin Silverman? A. Yes, I saw Silverman last night.

Q. Did you see Lawrence Bevins last night? A. Yes, I did not speak to him, but I saw him.

Q. Did you see James Henry last night? A. I don't think I spoke to him, except——

Q. You saw him? A. Yes, sir.

Q. And the other officers who testified in this case?

Mr. Weinberger: Officer, stand up. (A man stands up in the courtroom.)

A. I think I saw Bauland, I don't want to be sure.

Q. You saw every officer and detective who testified in this case last night, didn't you? A. Well, I don't think Heard was there, I remember seeing Moroney, but I would not be sure of Heard. I would not want to take my oath on that, Mr. Weinberger, as I don't want to make any misstatements. I know I saw Finan, he went over with me, I think, he dined with me. I saw Silverman when I got to the entrance of the hall, and I saw Henry later, and there was an Assistant United States Marshal——

The Court: What has all this got to do with this case?

Mr. Weinberger: It is in reference to his men and their testimony.

The Court: You mean to say that these witnesses, being in a meeting last night, has

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anything to do with this case? Answer the question yes or no.

Mr. Weinberger: No, but these men going to a place and arresting people and cursing them, and forcing them to testify in contradiction to the Constitution of the United States, under the direct supervision of the District Attorney, is very material to this case to show that they were there, whether they got it constitutionally, legally, or not, they were there and were willing to stretch any right.

The Court: Now you know, as a lawyer, that what you are saying is not proper. I will permit no further questions on this line.

Mr. Weinberger: I contend, and I want it clearly on the record, that this is the purpose of this testimony, that I want to show that all the officers that testified——

The Court: I will not permit you to make that statement.

Mr. Weinberger: There is no way——

The Court: Be quiet. You are now referring to some event last night, connected with a public meeting, are you not?

Mr. Weinberger: I am.

The Court: Very well, I will hear nothing further upon that subject.

Mr. Weinberger: And I submit that I must have on the record, to defend these defendants in this court and before this jury, that I must have upon this record that I believe it is perfectly material to show that these men, whether it happened before the incident on which they are being tried or afterwards, I submit if you can show the character of this man, that he does not believe in obeying the law himself and does not believe in obeying the Constitution and he proceeds to violate it, and I contend it is perfectly material to

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show this to the jury so that they can properly weigh their testimony.

The Court: Very well, take your objection. I overrule any such line.

Mr. Weinberger: I respectfully except.

The Court: Very good. Now go on. Anything further?

Q. Was it by your direction, Mr. Content, that these men went to the Madison Square Garden meeting? A. It was not. I was at the meeting but I did not know any of these men except Mr. Finan, whom I haven't seen in two years.

Q. Do you know anything of orders by the Attorney General to arrest men, and force them to answer questions? A. No; I know that the Attorney General of the United States has ordered all officers of the law and all good citizens to uphold the laws of this country and to see they are obeyed and lived up to.

Q. That is not in answer to my question, Mr. Content. Mr. Stenographer, will you please read it.

Q. (Question read.) A. There are no such orders, Mr. Weinberger, nor to force people to answer questions. There are orders by the Attorney General to arrest men who wilfully violate the laws of the United States.

Q. Are there any orders of the United States Attorney General to soldiers or police, to arrest the people and force them to show cards, contradictory to that section of the constitution that I read to you?

Mr. Content: I object, if your Honor please.

The Court: The objection is sustained.

Mr. Weinberger: I respectfully except.

Q. Do you know and didn't you see—I will change that question. Didn't you see the officers in this case and the soldiers, compelling people to answer

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questions and to show cards last night? A. I did not.

The Court: Now, Mr. Weinberger, you know——

Mr. Weinberger: Your Honor——

The Court: Don't you answer until I get through, then you can make any answer you please. You know as a lawyer, that that is a very improper question. You know that has nothing whatever to do with the case. You know that that is an effort to introduce into this case a collateral issue as to something that happened subsequent, which could be readily disposed of and readily tried, if necessary. It has nothing to do with this case, and I warn you now, that I will not permit any further reference to any proceedings at a public meeting last night.

Mr. Weinberger: I respectfully except to your Honor's remark, about my question being improper; and I offer, on the question of whether it is proper, to submit this to your Honor: That at all times—I am going to argue a proposition of law only——

The Court: I have ruled and you have an exception.

Mr. Weinberger: That is not satisfactory unless I can feel, if the Court pleases, unless I can feel certain that I have placed my legal argument before the Court, and then the Court has ruled; and I am only going to argue on the legal proposition, and I think on the facts——

The Court: I will not permit you to make an argument and to state in the presence of this jury——

Mr. Weinberger: I ask that the jury be withdrawn.

The Court: No, it is not necessary. I have a question before me. I have ruled on it, now proceed.

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Mr. Weinberger: And I respectfully submit that in order to——

The Court: You may take an exception if you so desire.

Mr. Weinberger: That is not enough, if your Honor pleases. My point is this: At the present time there is a feeling that these men must be convicted——

The Court: Now, Mr. Weinberger, you go on and ask questions.

Mr. Weinberger: May I ask that the jury be withdrawn while I argue the question with the Court?

The Court: No, the jury will not be withdrawn. We will go on and try this case now. Your objection is overruled, and you will proceed.

Mr. Weinberger: Very well.

The Court: Continue with your questions if you have any.

Mr. Weinberger: May I ask your Honor again that this jury be withdrawn.

The Court: I have already stated no. Go on with your questions.

Mr. Weinberger: One moment, your Honor. I will state this to your Honor, make this statement before the jury——

The Court: I don't desire to hear any argument on a perfectly obvious proposition of law.

Mr. Weinberger: Perhaps it won't be so obvious.

The Court: Mr. Weinberger, continue.

Mr. Weinberger: I respectfully except to the refusal of the Court to ask the jury to be withdrawn, and to allow me to argue the legal proposition.

The Court: Very well, go on and ask your questions, that is the orderly way to proceed and try a lawsuit.

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Mr. Weinberger: I haven't any more questions to ask.

Mr. Content: Will your Honor permit me, as a member of the bar——

Mr. Weinberger: I object to any statement by Mr. Content as a member of the bar.

The Court: You can ask yourself a question.

Mr. Content: I have no questions to ask.

The Court: Then say nothing.

LOUIS STERNBERG, one of the defendants, called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Mr. Content: Mr. Weinberger states he needs an interpreter. If so, the Government will furnish an interpreter.

(Jacob Shapiro was duly sworn to act as interpreter.)

Q. Where do you live? A. 49 Rutgers.

Q. Ask him whether he registered on June 5th Show your card. A. I registered Saturday night in prison (producing a card showing registration).

Q. At the Madison Square meeting on May 31st, did you go there with anybody? A. No, sir.

Q. What did you go to the meeting for? A. I thought they would speak Yiddish, so I went to listen to it.

Q. Can you talk English? A. No, I cannot.

Q. But you understand English a little bit? A. I don't understand anything, sir.

Q. Are you an anarchist? A. No, sir.

Q. Do you belong to a labor union? A. No, sir.

Q. Do you understand "labor union"? A. I be-

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long to my union that I am employed by—ladies' hats.

The Court: That is a labor union.

Q. Ask him whether—are you a Socialist? A. No, sir.

Q. Are you a member of the No-Conscription League? A. No, I am not.

Q. Are you a member of any organization to resist conscription or registration? A. No, sir, I never was.

Q. Have you taken part in any meetings against conscription? A. No, sir.

Q. On the 31st day of May, did you give out any leaflets there, people's exhibits 1 and 2, or both (handing same to witness)? A. I did not.

Q. The officers testified—one officer or militiaman testified that he found those pamphlets in your pocket. Where did you get them? A. They found them in my pocket.

Q. Where did you get them? A. A man gave it to me, I don't know who he is.

Q. Where did he give them to you? A. On the balcony. I was sitting on the balcony. I was sitting on a bench.

Q. Did you throw any of these leaflets from the balcony? A. I did not.

Q. Did you give out any of these leaflets after you got them? A. No, sir.

Q. Were you up in the—did you not know Becker—

Mr. Weinberger: Becker, stand up, please.

Q. (continuing) Before you were arrested? A. No, sir, I didn't know him.

Q. Did you know Mr. Kramer before you were arrested? A. No, sir.

Q. Did you know Mr. Walker before you were arrested? A. No, sir.

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Q. Did you at any time stand with these three men in the balcony at the Madison Square Garden meeting? A. I had not seen them; I don't know who they are; I was never with them.

Q. So that when the detective and the militiamen say that you and these three men were up in the balcony giving out leaflets, that is not so?

Mr. Content: If the Court pleases, I don't like to interrupt, but there is no testimony that people or militiamen saw them giving out these in the balcony. The soldier testified—or Mr. Bevins testified that he saw them dropping.

By the Court.

Q. The sailor that was on the stand yesterday said that somebody was dropping these circulars from the balcony; that he, the sailor, looked up, and that it was Sternberg. Then he went up, the sailor went up to the balcony, that is Mr. Bevins, and he saw two people there, one of whom was Sternberg, and asked him whether he dropped any of these things from the balcony. A. The only thing I had was these two circulars in my pocket, and they arrested me. I was sitting on my bench. They arrested me because I have these two circulars in my pocket.

By Mr. Weinberger.

Q. Were you with Becker, Kramer and Walker at any time when they—when Becker and Kramer handed out circulars? A. I don't know, I never saw him in my life, and was never with him.

Q. And you were not one of a group that got circulars to distribute over the Garden? A. No; if I could only know how to read it, I would not have taken it at all, I did not see it.

Q. And when Detective Finan and the officer testified that you, Kramer and Becker, and Walker

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were together in a group on one of the balconies giving out these pamphlets or getting them, that is not true, is it? A. No, it is not true.

Q. Neither Kramer nor Becker handed you a bundle or this bunch whichever you choose to call it, and asked you to go on the balcony and to give them out? A. No.

Q. When did you first see Kramer on that night of the arrest? A. When they arrested me, and when they took me downstairs, then I saw the other men.

Q. Never saw them before? A. Never saw them before.

Q. Walker is a member of a labor union. Did you ever meet him in your labor union?

The Interpreter: He wants to know if it is a hat makers'.

Mr. Weinberger: What is that?

The Interpreter: Whether he is a member of the hat makers'.

Mr. Weinberger: No, printers' union.

The Witness: This union does not come together with the other, and I don't know him.

Q. Did you say to Sternberg—no, to Walker, in English, "Did they get any circulars," after you were arrested? A. I did not, I don't know how to express it—I don't know how to make it out in English.

Q. Did he say to you, "They got everything I had"? A. No, he said nothing to me. I only asked them, "I am not guilty, gentlemen, I don't know anything; what did they arrest me for"; that is all I asked.

By the Court.

Q. Did you say that in English? A. No, in Yiddish.

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Q. To Walker? A. I said in Yiddish to Walker, "I don't know anything at all," and "What they arrested me for?"

By Mr. Weinberger.

Q. And did you then say to him, "Did they get anything on you?" A. I have not said a word—didn't say anything.

Q. Did you say anything in a whisper to Walker, "did they overhear any of your conversation regarding instructing the men not to register next Tuesday?" A. No, I never said it in my life.

Q. Did you say it in English or Yiddish? A. I never said it.

Q. And did Walker then say to you, "I guess there is a number of detectives in the building, and they must have overheard us"? A. He never said anything like that to me, nor did I say anything to him.

Q. And then did you answer, "Well, I guess they get us then"? A. I never said it.

Q. Did Officer Silverman say to you, "Boys, now this is a little favor, a little silent tip: the less you say now, the less will be used against you"? A. He never said a word to me about it.

Q. They only took you to jail? A. That is all they did.

Q. Now, when you were arrested, where did they take you to? A. 57th street court.

Q. And what happened there? A. They searched me to see whether I have got any money or anything else, and then they put me in a cell.

Q. Did they tell you at that time what you were arrested for? A. Never said a word to me.

Q. How old are you, Mr. Sternberg? A. Twenty-four.

Q. And when did you come to this country? A. Four years ago.

Q. And how long have you worked in the place where you are working now? A. Four years. Since I arrived here I am working there.

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Q. You did not go to public school or night school? A. No, I did not go, because I had to work, I got to support my family in order to send money home.

Q. Whom do you send money home to?

Mr. Content: I object to this, if your Honor please.

The Court: I will let him answer.

A. To my parents at home.

Q. And what are your hours where you work?

A. From 8 in the morning until 6 in the evening, one hour for dinner.

By the Court.

Q. What is the name of the firm that you work for? A. Borenstein & Sons.

By Mr. Weinberger.

Q. That is the same firm you worked for, for the past four years? A. Before, I lived in Wooster street, now I live in over here.

Q. But you worked for him now four years? A. Yes, sir.

Q. Do you ever work overtime? A. If it is necessary, sometimes; sometimes not.

Q. When you went to the meeting did you see policemen around the door? A. I saw a lot of policemen around the door.

Q. Did you see policemen inside? A. Inside I didn't see any, I only saw outside.

Q. Did you see soldiers in the building? A. When they—when the speaker addressed the meeting, then I seen soldiers sitting down but otherwise I did not see any.

Q. Have you ever given out pamphlets of any kind before May 31st? A. I don't know what it is, I never had any in my life.

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By the Court.

Q. Did you ever give out any pamphlets at any other time?

Mr. Weinberger: Or any other kind of pamphlets.

A. No, sir.

By Mr. Weinberger.

Q. Did you ever give out pamphlets in reference to anything else, or in reference to this conscription or other matters? A. I didn't go to any meeting, I didn't go anywheres.

The Court: The answer is, in effect, "No."

Q. In the balcony where you were sitting, did you see anybody there throw leaflets off the balcony? A. No, I didn't see it; I don't know.

By the Court.

Q. Let me ask you: where did you get the two leaflets, the different papers that you had, the leaflets?

Mr. Content: That is a bundle, your Honor.

Q. Where did you get the leaflets that were found on you? A. A man walked around the balcony and distributed them, I don't know what it is, I put it in my pocket.

Q. Hold up that bundle. (Same is held up.) Did you have all those—it has been testified that you had this bundle or group of papers which are now shown you, being Government's Exhibit 6. Is that correct? A. That was much less than that.

Q. How many did you have? A. There may have been five or six circulars, it is very thin, not as heavy as this.

By Mr. Weinberger.

Q. So that if the officer testified that he took that heavy bundle out of your pocket, and there was just as many as there are now there, he was not telling the truth? A. It is not true.

Q. Where did you get these pamphlets, on the way in or out, what time? A. While I was sitting on the balcony, a man passed by and gave—it must have been around half past nine or ten—and gave me a few of those circulars.

Q. And you say there was no more than four or five of the circulars that he handed to you? A. That is all it was, very thin, and this package is too heavy.

Q. Sternberg, do you know Mr. Kiminitz Litovsky? A. I do.

Q. Do you believe in opposing government? A. I believe in the country.

Q. He believes in the government? A. Yes, sir.

Q. And you believe in obeying the law? A. I do.

Q. And you do try to obey the law? A. Yes, sir.

Q. Have you ever been convicted of any crime? A. Never in my life.

Q. This is the first time you were ever before arrested? A. The first time.

Q. When you were asked to register, who asked you to register in the Tombs? A. Saturday they let all the prisoners out, they should register, so we went into a line, they called my name out and I registered also.

Q. Who spoke to you when you registered? A. A man not very tall.

Q. The warden of the Tombs?

Mr. Weinberger: Stand up. (Man stands up.)

Q. Is this the man? A. Not this man, the other man that talked Yiddish, he was in uniform.

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Q. Did he ask you the questions? A. He asked me questions. And he wanted to know whether I am ready to go as a soldier. I answered, if necessary I will go.

Q. Did he ask you the other questions that were printed on the paper? A. He asked me whether I believed in war, and I said sure. That is all I said to him.

Q. Did he ask you anything, where you were born, and when you came to this country? A. He asked me where I lived, and what State I came from, and I told him everything.

Q. Told him what and where and when you were born? A. I told him 24 years ago, so he figured it out, that is all he said.

Q. Did he ask you whether you ever had any military training? A. He never asked me that.

Q. When he got through asking you these questions in Yiddish, you signed the paper? A. Yes, I signed my name in Hebrew.

Q. Who composes the firm of Borenstein & Sons, that you worked for? A. N. H. Borenstein & Son.

Q. Who is the manager of Borenstein & Son? A. Rosenthal is the name, Mr. Rosenthal, he is the foreman.

Q. Who is the manager? A. The bosses themselves.

Q. Is Mr. Press in court (a man stands up). What is Mr. Press's business in that place? A. He is the foreman.

Q. Is Mr. Borenstein in court (a man stands up). Is this one of the firm of Borenstein & Son? A. Yes, sir, the son.

Q. Did you ever attend any school to learn English in the four years that you were here? A. No, I had no time to go.

Q. Was there anybody that knew you were going to Madison Square Garden before you went? A. I went with a friend of mine from the shop.

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Q. And did he have any literature to give out?
A. No, he had none of it.

Q. And he did not get any there? A. He didn't get any there.

Q. And you didn't arrange with that friend to meet anybody there to get literature? A. No, I didn't talk to him and I didn't know anything at all about him.

Q. As far as you know, before you went to that meeting, you didn't know that they were going to give out literature against conscription? A. If I would have known what it was, I would not have gone there at all; not at all.

Q. And at any time did you know that they were going to have a meeting, or there was a meeting going to be held at Hunt's Point Palace? A. I did not.

Q. Can you read English, if you cannot talk it?
A. No, sir.

Q. Can you read any language? A. The only language I can read is Yiddish.

Q. Do you write Yiddish? A. Yes, sir.

Cross-examination by Mr. Content.

Q. What time did you get to this meeting on the 31st of May, 1917? A. About seven o'clock.

Q. About seven o'clock? A. Yes, sir.

Q. What time did you go inside the Garden? A. Eight, or a little after eight.

Q. You thought they were going to speak in Yiddish? A. I thought they would talk Yiddish.

Q. And they only talked English, didn't they? A. Yes, sir.

Q. And you stayed there for three hours or other during two hours of the meeting, though you could not understand a word they were saying? A. Had I known that they would only have talked English I would not have gone there; and while I was there I thought there would be some Yiddish speakers, so I wanted.

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Q. So you just waited for three hours? A. Maybe two and one half hours.

Q. Who told you about the meeting in advance?
A. It was published in the Jewish papers that there would be a meeting.

Q. What is the name of this friend of yours that went with you to the meeting? A. Jake Schoenfeld.

Q. Is he here in court (a voice said "yes," and a man stands up)? A. Yes.

Q. Can he speak English? A. A little bit English.

Q. You don't speak any English at all? A. No.

Q. How did you give your pedigree at the police station, I mean at the Night Court, at 57th street night court? A. I spoke in Yiddish, and Morris translated it into English.

Q. Did this gentlemen talk to you at all on registration at any time in the Tombs (indicating the Warden? A. He spoke to me in English and I answered in Yiddish, I answered him in Yiddish.

Q. Didn't you answer any questions in English?
A. He asked the questions in Yiddish, and I only answered him in Yiddish.

The Court: Let the record indicate that the man referred to was Warden Hanley.

Q. What were you doing with the contribution blank of the No-Conscription League in your possession if you were not interested in that league?
A. I didn't have it, I don't know what it is.

Q. That is a part of Government's Exhibit 6. Did you speak to any of these officers at all in English? A. No, sir.

Q. You say that in the court they asked you questions in English and you answered them in Yiddish?
A. They asked me English questions, they asked—they only asked me what were you arrested for and then in Yiddish.

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Q. Did they ask you your age? A. Yes, and I answered in Yiddish.

Q. Your residence? A. Yes, and I answered in Yiddish.

Q. You were speaking some English in the Commissioner's office the day of the hearing, Saturday, a week ago, weren't you? A. I did not talk English.

Q. Why, didn't you answer the first few questions to me in English before you asked for an interpreter? A. I spoke to him in Yiddish, and he said come to me into my room and he spoke to you in English, he said, that is, the District Attorney, Mr. Content, you asked me some questions in English and I answered you in Yiddish, so you said to him, come into my room and I will talk to you in English.

Q. I didn't mean in my room, down stairs, I meant the day of the hearing. Didn't I ask you the first two questions on cross-examination in English, and didn't you reply to me in English. A. I answered in Yiddish.

By the Court.

Q. Do you understand what you are being asked now: The day that you were before the Commissioner, the gentleman with the white beard? A. No, I answered him in Yiddish.

Q. Did you have any conversation at all with the defendant Walker in the Madison Square Garden? A. Only I didn't speak a word to him, only when they arrested me, and they put us together, then I said to him, "What did they arrest you for?"

Q. In what language did you speak in? A. In Yiddish.

Redirect examination by Mr. Weinberger.

Q. Did you ever—as far as you know, did you have one of these contribution leaflets in your pocket (indicating paper)? A. No.

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Q. Have you ever seen that before it was shown to you here today? A. I never saw it until the present moment.

Q. Did they show it to you in court? A. No.

Q. Did they take any of these out of your pocket, so far as you know? A. No, only these two papers.

Q. They say that you had this one in your pocket at the time they took the other pamphlets out (indicating)? A. The circular, that I did not have.

Q. When you were given Government's Exhibit 1, and Government's Exhibit 2, were they out flat?

A. It was together like this (indicating). It was folded like this (indicating).

Q. When you appeared before the Commissioner in a room on this floor, when I was there and Mr. Content spoke to you, did someone else ask you the same question in Yiddish? A. Yes, it was another lawyer with glasses and he spoke to me in Yiddish.

Q. Do you know whether his name was Harry Goidel? A. I didn't know his name.

Q. And he asked all the questions in Yiddish? A. He was told to ask me what I talk, and he afterwards translated it.

Q. And at no time did you talk English before the Commissioner when you were being examined with the other defendants and I was there? A. Only Yiddish I spoke.

Q. In the Tombs, who was there besides Warden Hanley, when he asked you questions?

Mr. Content: That has been gone into on direct, and I don't know whether it is proper on redirect, your Honor.

A. There was another man in uniform, not very tall, pretty stout man.

Q. Did he talk to you, too? A. He spoke to me in Hebrew.

Q. That is the man that asked you all the questions about registering? A. Yes, sir.

By the Court.

Q. Let me ask you this: You remember when the sailor arrested you? A. Yes, sir, I do.

Q. Well, was that friend of yours, Jake Schoenfeld, with you then? A. Yes, sir, he was standing looking at the people and I was sitting on the bench.

Q. Was he right beside you? A. He was as far away from me, about as far as that (indicating).

Q. Indicating a foot and a half? A. A foot and a half.

Q. Was there anyone else near you? A. There was plenty of fellows near me.

Q. When you were arrested at that time was there anyone in the balcony where you were, in the vicinity, alongside of you and Schoenfeld? A. There was a lot, a whole lot of people there that night.

Q. When you were arrested? A. Yes; there was quite a whole lot of people.

Q. Right near you? A. Right around me, some of them were away, too.

Q. That is what we are trying to find out. Direct your mind to the time that the sailor, Bevins, arrested you? A. There was a lot near, when he started to arrest me, and quite a lot of people went out, and there was some people not very far away from me.

Q. Now didn't your friend Schoenfeld have any of these circulars with him? A. No, sir.

Q. You are sure of that? A. Sure, I can swear to it.

Q. He did not have any at all? A. He only listened to what the speakers had to say.

Q. Well, did you notice whether any of the people near you had any of the circulars? A. No, I did not see it, I only put it in my pocket.

Q. As I understand you, you never saw Kramer or Becker before your arrest? A. I never saw them.

Mr. Weinberger: I want to break the continuance of this, and call Mr. Crimmins, who

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is a very busy man, and I want to call him as a character witness for Walker.

The Court: Very well.

JOHN J. CRIMMINS, a witness called on behalf of the defendant Walker, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. Have you given your address, Mr. Crimmins?
A. 3 West 13th street.

Q. What is your business, Mr. Crimmins? A. Financial Secretary of the Printers' Union.

Q. Do you know Mr. Walker? Walker, will you stand up, please. (Defendant Walker stands up.)

A. I do.

Q. Is he a member of your union? A. He is.

Q. How long have you known him? A. About twelve or thirteen years.

Q. Do you know other people who know him? A. I do.

Q. What is his reputation for truth and veracity?
A. It is the best as I know it.

Q. Mr. Crimmins, are you a member of any Anti-Conscription League? A. No, sir.

Q. You are not an anarchist either? A. No, sir.

Q. You are a labor union man? A. Yes, sir.

By the Court.

Q. How long have you known Walker, Mr. Crimmins? A. Since he became a member of the union, about twelve or thirteen years.

Q. About twelve or thirteen years? A. Yes, sir.

Q. How often have you seen him in that time? A. Well, I have seen Mr. Walker sometimes when he is out of a position, daily. We have a custom in our union, when a man is out of a position, he re-

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ports at the headquarters and leaves a roll call up there of those that is looking for a position. Mr. Walker, when he was out of a position, came to headquarters, and I sent him out to work.

Q. And did you get any complaints on any of the jobs that you placed him in? A. He has not had any; he is a good workman and I know him.

Mr. Content: No more cross-examination.

JACOB SCHOENFELD, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. Mr. Schoenfeld, are you an anarchist? A. No.

Q. Are you a Socialist? A. No.

Q. Do you belong to a labor union? A. I belong to a union, yes.

Q. What labor union do you belong to? A. Ladies' hats.

Q. Do you know the defendant Sternberg? A. Yes, sir.

Q. Do you know—how long have you known him? A. I know him from old country.

Q. From Russia? A. Yes.

Q. Did you come over with him? A. Yes.

Q. On the same ship? A. Yes, sir.

Q. And during the four years that you were here, have you continually known him? A. Yes.

Q. You work in the same shop that he does? A. Yes.

Q. Have you worked in that same shop four years too? A. No, sir, two and one half years.

Q. How many years? A. Only two and one half years.

Q. Only two and one half years. In that time, and since the time that you come from the old coun-

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try, and came over here, in the four years since he was here, did you ever hear him talk English? A. No.

Q. Can he talk even broken English? A. No, not at all.

Q. Did you go with him to the meeting at Madison Square Garden? A. Yes, sir.

Q. Where did you start from? A. From a restaurant.

Q. Where was that restaurant? A. On Third street.

Q. How was it that you went to the meeting with him? A. He was reading in the paper about it.

Q. What paper did you read it in? A. *The Forward*, Jewish paper.

Q. You read it in the *Voerwarts*, too? A. Yes, sir.

Q. When did you tell him about that? A. The same day, the day—the same day we was reading the same paper.

Q. He was reading with you? A. Yes, sir.

Q. What time did you come to this meeting? A. Seven o'clock, we started to walk.

Q. And what time did you read this paper, in the evening? A. It was in the morning, it was in the afternoon.

Q. In the afternoon. The same day you went to the meeting? A. Yes.

Q. And that was the first time you had an idea of going to the meeting? A. Yes.

Q. You didn't belong to the No-Conscription League? A. No.

Q. You are not opposed to conscription? A. No.

Q. Not opposed to registration? A. I am not of age yet.

Q. You are not of age? A. No.

Q. You are not opposed to the principle of registration? A. No.

Q. You have taken no part in any meetings against conscription? A. No.

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Q. When you went from the restaurant with Sternberg to the meeting, tell us what you did when you got there? A. We were standing in line, and then we walked upstairs and sat down in the balcony.

Q. How long did you stand in the line? A. About an hour.

Q. And what entrance did you go up, to get to the hall? A. The other side of the building.

Q. The main entrance? A. Yes, the main entrance.

Q. You were standing in line on what street? A. On Fourth avenue.

Q. And you had to go down Madison avenue to get in? A. Yes, sir.

Q. You didn't attempt to get into any committee entrance on Fourth avenue, did you? A. No, sir.

Q. You went in like the rest of the public? A. Yes, sir.

Q. When you got in, what part of the building did you have a seat in? A. On the balcony.

Q. What balcony? A. On the last balcony.

Q. And he was with you all the time? A. Yes, sir.

Q. Did you have any of Government's Exhibit 1, or Government's Exhibit 2 with you? A. No, I did not.

Q. Did you get any of these pamphlets while you were there? A. No, I didn't get any of them.

Q. Did you see defendant Sternberg come there with any pamphlets like that? A. No.

Q. Did you see when he got these pamphlets? A. No.

Q. How long were you sitting there before the arrest? A. About an hour and a half.

Q. And what, tell us how the arrest took place? A. Two soldiers came over and he says, "Who gave you that?" So he said, "A man gave it." He said, "You are under arrest."

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Q. You mean the soldier, or do you mean a sailor?

A. A sailor and another soldier.

Q. He said what? A. He says, he asks him, "wao gave you this paper"; there was two or three, I don't know; he said, "A man gave them to me," and he looked him over.

Q. And then what happened? A. Then they took him away; I wanted to go with him, and he said, Mr. Schoenfeld came with me, and he sat right there.

Q. And he sat there? A. Sat right there.

Q. Were you with Sternberg from the time you went into that building until the time he was arrested? A. Yes, sir.

Q. Did you see him at any time with Becker, Kramer or Walker—will you stand up, please (defendants stand up)? A. I did not.

Q. Did you see either of these three men at any time in your life? A. Never in my life until the present time.

Q. Did you see these two men, Becker and Kramer, give out a lot of pamphlets, and give them to Sternberg as one of the men, and tell him to give them away? A. I never saw him before until now.

Q. Did you see anybody hand Sternberg any of these circulars? A. Yes, I saw, but I could not recognize him.

Q. When was it that you saw somebody hand him circulars? A. In Madison Square Garden.

Q. Did you see how many circulars he had with him? A. I could not tell you how much, but a few only.

Q. A few only? A. A few in all.

Q. You could not describe the man? A. No.

Q. Was that before you went to the balcony? A. No, on the balcony.

Q. You mean while you were there, they came around and handed these out, these circulars? A. They came along at that time with the circulars.

Q. Were you and Sternberg in your seats when

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that occurred? A. He was seated away from me, I think.

Q. You were in the next seat to him? A. Next seat to him; I was in this way when he was in behind me (indicating).

Q. He was behind you? A. Yes.

Q. Well, then, you were in one seat and Sternberg sat behind you? A. Yes.

Q. Now did you see what happened, did somebody go around and give out circulars? A. Yes.

Q. And did you see the circulars, not the circular? A. No, I saw them when they arrested him.

Q. The only time you saw them was when they arrested him? A. Yes.

By Mr. Weinberger.

Q. Was it a large bundle, big like this, when they arrested him (indicating)? A. Never had a bundle like that.

Q. You are sure he never had a bundle as big as that in his pocket? A. I am sure for at the time they were arresting him I says wait to the soldier, and he hesitated, and he said, look at the papers that is here.

Q. How much, a few papers? A. Yes, sir.

Q. Did you see Sternberg throw any of these leaflets over the balcony? A. No, sir.

Q. If he wanted to throw any of these over the balcony he would have to do it by getting up and going to the front to be where he could? A. Yes.

Q. You are positive he did not throw any over? A. Yes, sir.

Q. In all the years that you have known him, all the places that you went with him, did you ever hear him talk in English to anybody? A. No.

Cross-examination by Mr. Content.

Q. When did you come to the United States? A. Four years ago.

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Q. When, what month? A. I think it was June.

Q. June, 1913? A. Yes.

Q. What ship did you come on? A. Ship *Lapland*.

Q. How old did you give your age then to the immigrant authorities? A. Twelve years.

Q. You gave your age as twelve? A. Yes, sir.

Q. So you are only sixteen now? A. Yes, sir.

Q. That is all? A. That is all.

Q. Sure of that? A. Quite sure, I am older than that, but I had a half ticket.

Q. What is that? A. I was small when I came over here.

Q. How old are you now? A. I am nineteen years now.

Q. You gave your age as twelve, four years ago? A. Yes, sir, I was very small.

Q. You were very small, so you gave your age as indicating that you were that age, is that right? A. Yes, sir.

Q. Four years ago then according to your present testimony you were fifteen, is that right? A. What is that?

Q. How old were you four years ago? A. Four years ago?

Q. Yes. A. Twelve.

Q. How old were you four years ago?

The Court: Objection overruled.

Q. How old were you when you came to the United States? A. I was—it was four years ago.

Q. Yes, you said four years ago first. A. Let me go and figure it.

Q. How old are you now? A. Nineteen now.

Q. How old were you four years ago? A. Fifteen.

Q. You were fifteen? A. Yes, sir.

Q. And why did you tell the immigration authorities you were but twelve? A. My father told them, I didn't know.

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By the Court.

Q. Did you know really what your age was? A. Yes.

Q. Did they ever tell you to tell it? A. He told me—he told them for me my age and I told him I was nineteen; I never knew before that I was nineteen until he told me.

Q. Who gave these pamphlets to Sternberg? A. I didn't see him.

Q. You didn't see him? A. No, sir.

Q. You were with Sternberg all the time and you never saw somebody give them to him? A. No, he was behind me.

Q. Well, did you know Sternberg had some pamphlets in his pocket when the sailor came? A. When I carried him up I saw it, he said so. That was the time I saw it.

Q. You didn't know it? A. No.

Q. You were with Sternberg all the time and you never knew he had any pamphlets in his pocket? A. No.

ALEXANDER BORENSTEIN, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. What is your address, Mr. Borenstein? A. Business or home?

Q. Home? A. 545 West 164th street.

Q. What is your business address? A. 618 Broadway.

Q. Are you engaged in business with your father? A. Yes, sir.

Q. What is the name of his firm? A. N. H. Borenstein & Son, Inc.

Q. What is your business? A. Manufacturer of ladies' hats.

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Q. Do you know the defendant Louis Sternberg?
A. Yes, sir.

Q. How long have you known him? A. Since about four years.

Q. How many people do you employ? A. Well, at the present time of the year we employ 150, and other times about 75.

Q. During the four years Sternberg worked for you continually? A. Yes, sir.

Q. You have seen Sternberg around the place at various times? A. Yes, sir.

Q. You have heard him talk to other people around the place recently? A. Why no, not recently.

Q. How recently? A. Well, I have not been generally in the place until about two months.

Q. Before the two months, have you heard him talking around the place? A. Yes.

Q. Some of your people talk in English around your place? A. Yes.

Q. And some talk Yiddish? A. Yes.

Q. You talk English to some people? A. Some of them I do.

Q. And some you talk Yiddish to? A. Yes, sir.

Q. During all the four years that you knew the defendant Sternberg, and that he worked in that place, did you ever hear him talk English? A. Well, that is a difficult question to answer. I have foremen going around the place.

Q. I mean, did you ever hear him? A. No, I did not.

Q. Did you ever talk English to him? A. No.

Q. Did he ever talk English to you? A. No, sir.

Q. When I asked you during four years, I didn't mean all the time, I meant while you were there, you personally did not come in contact with him in front of Mr. Press here? A. I did not.

Q. You never spoke English to him all the four years he was there? A. No, sir.

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Q. And he never spoke English to you? A. No, sir.

Q. When a man can talk broken English, he usually does it in your place, doesn't he? A. What is that?

The Court: He wants to know if he can talk English, if a man can, that they usually do talk it.

The Witness: Some of them try it.

Q. In other words, it is a habit, when a man is learning English, to talk it and practice it? A. Yes, they practice it.

Q. You never heard Sternberg even attempt to talk English? A. No, sir, I cannot say that.

Q. You mean to say that you have never heard him? A. Never heard him.

By the Court.

Q. Has he been employed steadily by your concern? A. He has been out of the place about a week now, he has not been down there recently.

Q. I mean until he was arrested? A. Yes, he was employed around the place, and he was always behaving himself in the past, for all that I knew of; he has always been down there all the time, and he is steadily there, for this reason: If they don't behave themselves very well, the natural thing is that we send them away.

By Mr. Weinberger.

Q. Do you know other people that know Sternberg? A. All my brothers know him, and my father knows him very well.

Q. Have you know him personally, too? A. Around the place, certainly.

Q. What is his reputation for truthfulness and honesty? A. He is a very clean boy, and I have known him to be an honest one; he behaved himself

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around the place so far as I know. Outside I cannot say.

Q. His reputation so far as you know, from the people you know, is very good? A. Is good, and I never heard anything against him.

Cross-examination by Mr. Content.

Q. You say you could not positively say that he never talked English? A. I said when the attorney asked me——

Q. I didn't hear what you said, I don't want to trap you, but I just want to know what you said? A. I walk around the place a good deal, in and out of the place, and I hear them in conversation, and all I hear them conversing in is Jewish.

Q. Naturally you would, you having a lot of Hebrew employees, naturally they would talk in their Yiddish? A. Yes, sir.

Q. And as a matter of fact, you could not say positively that he does not talk in English, could you? A. That I am almost sure of, I never heard him talk English in my place.

Q. In your place. But you would not say that positively he does not talk some English? A. I don't know.

Redirect examination by Mr. Weinberger.

Q. A lot of your people there talk English, don't they? A. Well, there is quite a lot of them talk English.

Q. You never heard him talk anything but Yiddish? A. This particular man?

Q. Sternberg? A. No, sir.

Recross-examination by Mr. Content.

Q. The majority of your employees are Yiddish? A. Not the majority of them, but some of them talk English and some Jewish, there is the price committees, they settle prices, and they talk English.

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By Mr. Weinberger.

Q. How many of the other people, about what percentage of the other people talk English, or broken English? A. I cannot tell.

MAX PRESS, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. What is your address? A. 1200 Hoe avenue, Bronx.

Q. What is your business? A. Foreman.

Q. Foreman for whom? A. For N. H. Borenstein & Son.

Q. How long have you been foreman there? A. Six months.

Q. Do you know the defendant Louis Sternberg? A. Yes, sir.

Q. How long have you known him? A. For the time I am there, six months.

Q. And you have heard him talk around the place? A. Yes, sir.

Q. You have spoken to him yourself? A. Yes, sir.

Q. Did you ever hear him talk English? A. Never.

Q. Did you ever hear him say anything in English? A. Never.

Q. When you talked to him, did you talk Yiddish? A. Yiddish.

Q. When you heard anyone else talk to him they usually talked Yiddish? A. Yes, sir.

Q. Do you know people that know Sternberg, do you know a few people that know him in the factory or outside? A. Yes, sir.

Q. What is his reputation for honesty and truthfulness? A. I have known him as a good fellow.

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Q. How is that? A. I know him as a good fellow in the place.

Q. You know him as a good fellow? A. Yes, sir.

Q. You never heard anyone say anything against him? A. Never.

Q. Did you ever see him outside the factory? A. No, sir, never.

Mr. Content: No questions.

SAM PELLISH, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. What is your address? A. I live in 49 Rutgers street.

Q. You know Louis Sternberg? A. Yes, sir.

Q. How long do you know him? A. Four years.

Q. Did you come over with him, too? A. No, sir.

Q. Did you know him in the old country? A. Yes, sir.

Q. How often have you met him in this country? A. Every day.

Q. You work in Henry Borenstein's factory there, too? A. No, sir.

Q. Where did you meet him, how did you come to know him? A. Where I go, in the same room.

Q. You live together? A. Yes, sir.

Q. In four years, did you ever hear him talk English? A. No, sir.

Q. Did you ever hear anybody talk English to him, and he answer in English? A. No, sir.

Q. Did you hear him talk even in broken English? A. No.

Q. Do you know other people who know him? A. Yes, sir.

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Q. What is his reputation for truthfulness and honesty? A. He is a good fellow, does not bother anybody.

Q. Do you belong to any No-Conscription League? A. No.

Q. Do you belong to any association to oppose registration or conscription? A. No, sir,

Q. Are you an anarchist? A. No, sir.

Q. Did you take part in any movement against militarism? A. No, sir.

Q. Did you live with Sternberg for the entire four years? A. All the four years altogether.

Q. And you are positive that in those four years he has never spoken English? A. No, sir.

The Court: Make that answer, "Yes."

Cross-examination by Mr. Content.

Q. You speak English, though? A. Quite a bit.

ISIDORE SCHWARTZ, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. You talk English, Mr. Schwartz? A. Yes, sir.

Q. What is your address? A. 13 East Third street.

Q. Do you know the defendant Louis Sternberg? A. Yes, sir.

Q. How long have you known him? A. I have known him since he arrived from the other side.

Q. How often did you meet him? A. Every day in the year.

Q. Do you work in the same factory with him? A. No, sir, I have a restaurant, he comes in to eat.

Q. Have you ever heard him talk English? A. No, sir.

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Q. Did you ever hear him say anything in your restaurant in English? A. No, sir.

Q. Did you ever hear him answer questions when they are asked in English? A. No, sir, he never asked any questions, he don't interfere with anything.

Q. Did you ever hear him discuss anything in English? A. No, sir.

Q. Or even any broken English? A. No, sir; not at all; he didn't try, never to speak a word of English.

Q. Never even tried? A. No, sir.

Q. Do you know other people who know him? A. Yes, sir.

Q. What is his reputation for honesty and truthfulness? A. Very fine, cannot be any finer reputation, it is a good, honest, nice employee, don't bother others, don't go out anywheres. I don't know what happened that he should have gone over there, he never goes out nights, or stays away from the place there. He eats his meal and then goes home, he don't try to go out never.

Q. Are you an anarchist? A. No, sir.

Q. Are you a member of the No-Conscription League? A. No, sir, I am a good citizen.

Q. Are you a member of any league opposed to militarism? A. No, sir.

Q. And so far as you know, is Sternberg? A. So far as I know, he is honest, sincere, that I know.

Q. You say you have known him for how many years? A. Four years.

Q. And he has always lived in that neighborhood? A. He did not live in that neighborhood, no, sir, he comes into my place for his meals.

Q. Where is your restaurant? A. 13 East 3rd street.

Q. During these four years he worked at Borenstein's, he was always eating in your restaurant?

A. Yes, sir.

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Cross-examination by Mr. Content.

Q. He is a good customer? A. A good customer, yes.

HYMAN SCHUNKLER, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. What is your address, Mr. Schunkler? A. 49 Rutgers street.

Q. How long have you known the defendant Louis Sternberg? A. I know him from the old country.

Q. How often have you met him in this country? Did you meet him every day or every other day? A. Almost every day.

Q. You are in business for yourself? A. Yes, sir.

Q. Where is your place of business? A. 196 Clinton street.

Q. Where did you meet Louis Sternberg almost every day? A. He was coming to my place, the store.

Q. For what? A. Just personally, he is a friend of mine.

Q. Just dropped in to see you? A. Yes.

Q. During the four years and before that you knew him, did you ever hear him talk English? A. No, sir.

Q. Did you ever hear him answer questions in Yiddish when they were asked in English? A. I never heard him answer in English, only in Jewish.

Q. And some of the people that came into your store and would talk, they can talk English just as you do? A. Never heard him talk, no, sir, never talks any English.

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Q. I cannot hear your answer. A. Never heard him talk any English, or them talk any English to him.

Q. I mean there is a lot of people around your place who do talk English? A. I don't talk much English either.

Q. But you never even heard Sternberg talk as much as you do, as much English as you are talking now? A. No, sir.

Q. You know of other people who know Sternberg? A. Yes, sir.

Q. What is his reputation? A. The best reputation that one can have.

Q. For honesty and truthfulness? A. He has a good, fine reputation.

Q. Ever known him to get in trouble of any kind? A. No.

Mr. Content: No questions.

SOLOMON WIDELANSKY, a witness called on behalf of the defendants, being first duly sworn, testified as follows (through official interpreter):

Direct examination by Mr. Weinberger.

Q. Where do you live? A. 79 Avenue C.

Q. What is your business? A. I am not working, I am making a living through my children.

Q. How did he say he makes his living? A. He is being supported by his children.

Q. How long have you known the defendant Louis Sternberg? A. Since he is in this country.

Q. Have you ever heard him talk English? A. Never.

Q. Did you ever hear him answer any questions that were asked in English? A. No.

Q. How often did you see him and where? A. He comes very often to my house, he is a countryman of mine.

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Q. Have you ever heard him even talk in broken English? A. No, sir.

Q. Are you an anarchist? A. No, sir.

Q. Are you opposed to conscription? A. No, sir.

Q. Or militarism? A. No, my children registered.

Q. You are not a member of the No-Conscription League? A. No, sir, I am no member.

Q. You have not taken part in any proceedings against conscription? A. No, sir; I don't even know whether there was any meetings.

Q. Do you know a few people that know Mr. Sternberg? A. Yes, sir.

Q. What is his reputation for honesty and truthfulness? A. He is a fine, honest man, he often goes to synagogue.

Cross-examination by Mr. Content.

Q. How old are you? A. Fifty-two years.

Q. How long have you been in the United States? A. Twelve years.

Q. Are you a citizen? A. No.

Q. You do not speak any English? A. No, sir, I cannot.

Q. Did you ever try to learn English and to talk English? A. No, sir.

Q. You say that you never heard Sternberg speak any English? A. Never.

Q. If he spoke English, would you know he was speaking English? A. I never heard him talk English.

Q. If he spoke English, would you know it was English? A. Sure I would know.

By the First Juror.

Q. Can you write any language? A. I know how to sign my name in Hebrew.

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By Mr. Content.

Q. Does he know how to write Yiddish? A. I also know how to sign my name.

Q. Ask him does he read Yiddish papers? A. I read in Yiddish papers.

CHARLES ZELKOWITCH, a witness called on behalf of the defendant, being first duly sworn, testified as follows (through official interpreter):

Direct examination by Mr. Weinberger.

Q. Have you given your address to the stenographer? A. 49 Rutgers street.

Q. Are you an anarchist? A. No, sir.

Q. Are you a member of any No-Conscription League? A. No, sir.

Q. Or anti-militarism league? A. No, sir.

Q. Or any league against registration? A. No, sir.

Q. Are you a member of any labor union? A. Yes, sir.

Q. Of what labor union are you a member? A. I am a tailor.

Q. How long have you known the defendant Louis Sternberg? A. He lives at my house, two and one half years, that is the time since I got married.

Q. You see him every day? A. I see him every night.

Q. You understand English a little bit yourself, don't you? A. No, I don't understand it.

Q. Did you ever hear Louis Sternberg talk English? A. No, sir.

Q. Did you ever hear Sternberg in the two years that he lived with you, talk English? A. No.

Q. Did you ever hear him talk in broken English? A. No, sir.

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Q. Do you know other people who know Sternberg? A. Yes, sir.

Q. What is his reputation for honesty and truthfulness? A. The best that could be said.

Mr. Content: No cross-examination.

SAM GORDON, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. Mr. Gordon, do you know Louis Sternberg? A. Yes, sir.

Q. How long have you known him? A. About three or four years.

Q. How often did you meet him during those three or four years? A. Some weeks two or three times, other weeks one time or two times.

Q. Did you ever hear him talk English? A. No, sir.

Q. Did you ever hear him talk in broken English? A. No, sir.

Q. Did you ever hear him try to talk English? A. No.

Q. Are you an anarchist? A. No, sir.

Q. Nor a member of a No-Conscription League? A. No, sir.

Q. Are you opposed to militarism? A. No, sir.

Q. Are you a member of any organization against registration? A. No, sir.

Q. Have you ever taken part in any meetings? A. No, sir.

Q. Against conscription and registration? A. No, sir.

Q. You know other people, or a few people that know Louis Sternberg? A. Yes, sir.

Q. What is his reputation for honesty and truthfulness? A. Fine honest fellow, nice honest man.

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. Mr. Content: No questions. I will concede that the next witness will testify the same way.

Mr. Weinberger: The proposition is, as I understand it, that they are going to put on a great many witnesses on this, and if they fail on this, that the whole house of cards falls down.

DAVID PLATT, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. What is your address? A. 89 Avenue C.

Q. And do you know Louis Sternberg? A. Yes, sir.

Q. Are you an anarchist? A. No, sir.

Q. Are you a member of the No-Conscription League? A. No, sir.

Q. Are you a member of any organization against registration or militarism? A. No, sir.

Q. Did you take part in any meetings against registration or conscription? A. No, sir.

Q. How often a week do you meet Louis Sternberg? A. About three or four times a week.

Q. Did you work in the same factory with him? A. No, sir.

Q. Did you meet him after his work? A. Yes.

Q. Did you ever hear him talk English? A. Never did.

Q. You have heard him try to talk broken English? A. Never.

Q. Did you ever hear anybody talk English to him? A. No, sir.

Q. And he understand and answer in Yiddish? A. No, sir.

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Q. You know other people that know him? A. Yes, sir.

Q. What is his reputation for honesty and truthfulness? A. Good.

Mr. Content: No questions.

LOUIS UDAH, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. Where do you live, Mr. Uдах? A. 230 Henry street.

Q. Do you know Louis Sternberg? A. Yes, sir.

Q. How long have you known him? A. About two years.

Q. How often do you meet him a week? A. A few times a week.

Q. Did you ever hear him—when was the last time you met him before his arrest? A. A few days before.

Q. Did you ever hear him talk English? A. No, sir.

Q. Did you ever hear him talk in broken English? A. No, sir.

Q. Did you ever hear anybody talk English to him and he answer in Yiddish? A. No, sir.

Q. Do you know other people that know him? A. Yes, sir.

Q. Do you know—what is his reputation for honesty and truthfulness? A. He is a very nice fellow.

Q. How about truthfulness, what is his reputation for truthfulness?

The Court: For truth telling, or telling the truth.

A. He is a very honest fellow, he is always telling the truth.

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Q. Do you mean he is very honest and tells the truth? A. Yes, sir.

Cross-examination by Mr. Content.

Q. That is your opinion, that he is a very honest fellow? A. He is very honest.

Q. That is your opinion? A. Yes, sir.

Q. What is his reputation? A. He is a very honest fellow, that is it.

Redirect examination by Mr. Weinberger.

Q. What is his reputation for honesty, what do people say about him? A. He is a very nice fellow.

Q. What do they say about his honesty? A. He is very honest.

Q. What about his truthfulness—what do people say, if they say anything? A. They also say he is a very nice fellow.

Q. And truthful? A. Yes.

MORRIS BECKER, recalled.

Direct examination by Mr. Weinberger.

Q. All we want, Mr. Becker, is in reference to what happened as far as Sternberg is concerned in talking English in the police station. Will you tell us in your own way when you came to the police station, what happened? A. When I was there in the police station, in 57th street, I found the fellows and the girls standing there; and I was standing a few minutes there, and they started to search us and two hundred dollars in bills was found with Sternberg; and a copper said to him—I don't know the name of the copper or rather the sergeant—he said to him in English that he wants to take away the money from him, in order to have it safe, that nobody will steal it from him.

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The fellow almost started to cry, tears came to his eyes, he didn't know that he is talking to him, what he wants to do with the money. The man that took the money asked every one of the fellows to explain to him in Jewish—I don't know what the words was—I don't want to talk Yiddish, I only want to talk English—but I answered for Sternberg, I told him, I explained to him I never talked Jewish, but I can make myself understood when I try to talk to some Jewish friends of mine. It is very hard for me to make him understand even Jewish, not to say anything about English. I can explain in Jewish to him, I can talk to him in Jewish, but I could not find the word in Jewish what I want, of what a receipt means, I don't know, and he didn't understand, and he still kept on referring to his money. I tell him that the receipt is right, that the money is good, I tell him that in Jewish. For five minutes then I was after explaining to him what a receipt was, and I could not find the Jewish word for receipt, I don't know what the Jewish word for receipt is to tell him, and I tell him, what I mean, but I could not get the word and I answered for him in the talk and so forth.

Q. What we want, Becker, is what happened in the police station. A. Yes, sir. Now, upstairs, we went there, and there was a lot of people there, and after we had been there awhile we came out and you know, I go before many Jewish people, and I never talk Jewish, I talk English, and if they forget I have to talk Jewish. I talk for this fellow, I want to explain how it was to that fellow. He said, "Now, do you understand that, how do you say it?" You understand English, don't you? I asked him in Jewish, I talked Jewish mostly with English words because I am accustomed to that, and in Russia they have to talk Russian, or Russian words, that is the way they make Jewish. But here I talked Jewish, with English words. I tell to him in such words as I can, and he ask me over every

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time, and I have to discuss it with him, there is other fellows who do, but he don't seem to have it, he will talk with the other fellows and I will talk to him and I will tell him what it means, but he don't know, I have to explain it to him again in Jewish, but this word I cannot tell him what it means, and I think he understand what it means, and then brings it up again and every time I have to explain it over again to him in Jewish.

It is every time the same thing, we come out on together, he start explaining, wants me to explain, he don't know anything what is meant. And as to this trial, he don't know anything what it is, he don't know what it means, he don't understand.

And when he talk to the fellows, they explain to him all about it, but he don't understand. He always come to me and goes over it, and says he don't understand anything.

I cannot make myself understood in Jewish with him. That is the way it seems, he does not know English words and that is the way I talk Jewish, with English words, and he don't understand the English words, he absolutely understands no English at all, and I try to think of what this word is in Jewish that he will understand and I cannot talk it so that he will understand it. He cannot understand English, he does not know anything about English language and does not understand the English words.

Q. Did you hear him in jail talk English? A. No.

Q. Did you hear him in the court room talk English? A. No, never.

Q. Did you hear him before the Commissioner talk English? A. No.

Q. Has he spoken English here? A. No, sir, on the floor when they took the registration cards it was nothing but Jewish.

Q. Who was the conversation had between? A. Who?

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Q. Yes. A. I was locked up in my cell, I don't know; I was standing on the corner of my cell, and I heard them talking to him, I heard one of these little fellows talking to him about how it is in Jewish—he is one of those fellows there that talks Yiddish—and when they started to talk to him they got an interpreter and talked to him, and I think they took him upstairs somewhere, and they talked in Jewish, and I cannot tell what that man was saying to him in Jewish, but I heard part of the conversation in Jewish.

Q. That is, in reference to registration? A. Yes.

Q. You heard the questions asked of Sternberg, and you heard Sternberg answer the questions? A. Absolutely, in Jewish.

Q. Did you ever see Sternberg before you saw him in the police station? A. I never seen him.

Cross-examination by Mr. Content.

Q. Did you say that you and he were not talking in English in the Commissioner's room Saturday a week ago, in English? A. In English?

Q. In English? A. If I spoke to him in English, then he never answered me; I told you that he spoke to no one in English.

Q. I ask you did you not speak to him in English when you were before the United States Commissioner? A. I never spoke to him in there—if I spoke to him in there, in the Commissioner's room, he never answered me if I spoke in English. I told you he spoke in English to no one that I ever heard.

Q. Yes, I know, we have had that explained by you, but I asked you one question and it is a simple one, and I ask that you answer the question. A. If I spoke to him he did not answer; he did not understand me.

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JOSEPH WALKER, recalled, and having been previously sworn, further testified as follows:

Direct examination by Mr. Weinberger.

Q. Mr. Walker, you did not know the defendant Sternberg before his arrest? A. No, sir.

Q. Never saw him before? A. No, sir, never saw him.

Q. Did you see him in the police station that night?

Mr. Content: That was all gone over.

Q. In the Night Court? A. Yes.

Q. Did you see defendant Sternberg there? A. Yes, sir.

Q. And did you hear defendant Sternberg talk English? A. He spoke no English.

Q. Did you hear anybody talk any English and he answer in Jewish? A. He spoke no English to my recollection.

Q. And when they asked for his pedigree did he give his pedigree in English? A. I don't think so, I doubt it; I was sitting down when that was taking place; I was sitting on the bench, but I think he gave it in Yiddish.

Q. Have you been in his cell in the Tombs? A. Where we are at, yes; I am with him now.

Q. In the same cell? A. In the same cell.

Q. How many days have you been there? A. About ten or eleven days.

Q. Have you ever heard him talk English in those ten or eleven days? A. No, he spoke absolutely no English.

Q. You have to talk to him in Yiddish? A. I make the best of it I can.

Q. You were born in this country, weren't you, Mr. Walker? A. Born in St. Louis.

Q. You ordinarily talk English only? A. Yes; I speak a little Yiddish.

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Q. You speak a little Yiddish? A. A little Jewish.

Q. And before the Commissioner did you hear Sternberg talk English? A. I would not say for sure; to be positive I would not say.

Q. Where were you? A. Seems to me I was sitting right next to Sternberg at that time.

Q. Did you hear him talk English? A. I don't think I have; I doubt it.

Cross-examination by Mr. Content.

Q. You speak Yiddish? A. A little bit.

Q. Where did you learn it? A. Well, I learned most of it in New York; I have been in Franklin, England, over thirteen years—about twelve years.

Q. Are you of the Jewish race? A. No.

Q. You are not? A. No, I am not.

Q. But you speak Yiddish? A. Yes, I speak a little of it; I speak Spanish very well.

Q. Did you hear Sternberg speak any English at all? A. I never heard him speak any, except to say water or something like that.

Q. Didn't you tell me when you came to see me in my room that he spoke a little broken English? A. Well, he can understand it.

Q. I asked you a question and you can answer that question, whether you told me that. A. I told you that he could not express himself in the English language.

By the Court.

Q. The question is whether you told Mr. Content that Sternberg could speak a little broken English. Did you tell Mr. Content that? A. Well—if he spoke it?

By Mr. Content.

Q. I didn't ask you that. Did you tell me that, yes or no? A. I did not, no.

Redirect examination by Mr. Weinberger.

Q. Has anybody said anything to you, Mr. Walker, that if you gave testimony against the other three that you would get off easy? A. I don't think it was anyone with the exception of Mr.—I think Mr. Content said something to me to that effect.

Q. And did anybody—how many times have you been taken out of the Tombs and brought over here?

A. I must have been brought out about four times.

Q. And questioned? A. Three or four times.

Q. Any of the officers say anything to you about you better testify? A. What officer do you mean; policemen?

Q. Any officer? A. No.

Q. Was there anything told you about if you took the stand against the other three you would get off easier? A. Yes, according to Mr. Content.

Recross-examination by Mr. Content.

Q. You wrote me a letter, didn't you? A. Yes.

Q. I never spoke to you before I got that letter, did I? You wrote to me protesting against your treatment, is that correct? A. Yes.

Q. And I sent for you in pursuance to your letter, is that correct? A. You did.

Q. Didn't I tell you so when you were brought in, that I only sent for you because you wrote that letter? A. Yes, sir.

Q. You wrote a similar letter to Commissioner Hitchcock, didn't you? A. Yes, certainly.

Q. Didn't I tell you at the very outset that I would not have sent for you but for the fact that you sent that letter to me? A. Yes, sir.

Q. Stand up (addressing one of the Deputy Marshals). Was this Deputy Marshal in the room at all times when you were there? A. Yes, sir.

Q. Was I ever in that room with you alone for one moment? A. No.

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Q. Didn't I call into that room the witness Henry who testified that you gave out hand bills? A. Yes.

Q. Didn't I allow you to question him to show that your treatment was fair? A. Yes, sir.

Q. And didn't Henry say to you in your presence positively that you gave out hand bills and leaflets? A. Yes, sir.

Q. And you had an opportunity to question him, didn't you? A. I did.

Q. You were sent for the following day again at your request, weren't you? A. Yes, sir.

Q. Didn't you tell me you wanted to come again? A. Well, you broached it to me.

Q. What? A. Didn't you broach it to me?

Q. Didn't you tell me you wanted to come and talk it over again? You told me you were very nervous that day. A. Yes, so I am.

Q. And I told you to go back to the Tombs and to calmly think it over and calm yourself, didn't I tell you to do that? A. Very well.

Q. And I told you if you wanted to be brought down the next day I would arrange it, is that correct? A. Yes, sir.

Q. And you were taken down again, brought down again, because you asked it? A. Yes.

Q. And was it on the second day that you were there that the soldier was there and I gave you an opportunity to talk to him? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. I told you that the first thing when you called on the following day, that the men were there who would testify against you and you could talk to them; is that correct? A. Yes, sir.

Q. You had an opportunity of doing that? A. Yes, sir.

Q. Did I make any threats to you of any sort? A. Well, no, I cannot say so, but I was intimidated.

Q. Did I raise my voice to you at any time in my room? A. No.

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Q. Did I make any promise to you of any sort?

A. No.

By Mr. Weinberger.

Q. Mr. Walker, you told Mr. Content, as he just stated, that you were very nervous when you were telling him things? A. Yes, I am troubled with neurasthenia, that is right.

Q. You are troubled with neurasthenia, you have been scared ever since you have been arrested, haven't you? A. Yes, I have been frightened since I have been arrested.

Q. I want to say anything I ask is not any reflection on Mr. Content; he did not mean to give the impression of that sort, but the fact is that this man has been scared ever since he has been arrested. A. I have never been in the Tombs before.

Mr. Weinberger: I want to state on the record, if the Court please, that anything I am bringing out now is not intended in any way as a reflection on Mr. Content.

Mr. Content: Don't say it then.

Mr. Weinberger: That is, this man is nervous and scared ever since I have seen him in the case.

Mr. Content: Is Mr. Weinberger testifying?

Mr. Weinberger: No, no, no.

Mr. Content: You are making the statement that he was nervous and he said he was.

Mr. Weinberger: I want to have it on the record, I am not casting any reflection on the record.

Mr. Content: I don't want the concession; if you have any reflections to cast, cast them.

The Court: The point is this, the man may be scared if he is arrested, and I should imagine that coming to trial a man might be in that condition of mind, but the only

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relevancy here is not his own notions and feelings, but whether or not anything has been said to him by any of the officials, either to induce him to testify falsely to save himself or for any similar purpose, that is all.

LOUIS KRAMER, one of the defendants, being called as a witness in behalf of the defendants and first duly affirmed, testified as follows:

Direct examination by Mr. Weinberger.

Q. What is your address, Mr. Kramer? A. I am living at 208 Second Avenue, I am paying rent there, but my permanent address where I receive all mail and where things are taken care of is at 132 St. Mark's Place, care of Dr. Glassberg.

Q. Are you an anarchist? A. I am.

Q. What do you understand anarchism to mean? A. Philosophy of a new social order based upon the understanding that all governments are unnecessary and police forces are unnecessary, judges, district attorneys, armies and navies are unnecessary, a society where each, according to his needs, each according to his ability has.

Q. Do you believe in forcing the overthrowing of governments by force? I mean physical force, dynamite and arms? A. All governments, as I understand, and from what I conception I understand and hold in regard to governments, is based fundamentally upon coercion, physical force, violence.

Q. Do you believe whether or not any government should be overthrown—you may say whether or not you believe any government should be overthrown by the use of force? A. Let me put the answer in the words of one of the greatest men as to what extent force may be applied——

The Court: No, you cannot do that, you may answer the question.

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Q. Do you believe in overthrowing governments by physical force? A. I do not. I believe in intellectual——

The Court: That is enough. You do not.

Q. Do you believe in militarism? A. I do not.

Q. Do you believe in an army and navy? A. I do not.

Q. Do you believe in taking part in war? A. I do not. To the point of death I will not take part.

Q. Do you believe in taking part in war on behalf of one government against another? A. I do not.

Q. Do you believe in taking part directly or indirectly with military arm of the government? A. I do not.

Q. Do you believe in taking any part with the militia? A. I do not.

Q. Would you be conscripted? A. I would not. I would go against the wall before I would be conscripted.

Q. Have you registered? A. I have not.

Q. Are you a member of the No-Conscription League? A. I am.

Q. Have you personally told anyone not to register? A. I have not.

Q. Have you agreed with anyone not to advise people to register? A. I have not.

Q. On the 31st day of May, 1917, did you go to Madison Square Garden with any other people? A. I did not.

Q. Did you go there in pursuance to any agreement to tell people not to register? A. I did not.

Q. Why did you go to Madison Square Garden meeting? A. On the night of May 31st, knowing that there was to be a peace meeting, a meeting held for democracy, and being a meeting to be held the night before registration, I thought, it being on the eve before registration, I went to the meeting in Madison Square Garden on May 31st with the

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object to or intention of distributing the leaflets which were advertising our No-Conscription League on June the 4th, on the eve of June the 4th. I started out about seven thirty and I reached the Square about a quarter to eight, the Madison Square Garden. The line was so dense, so thickly populated at that time it was impossible to get near the door. Having this bundle of leaflets I went to the stage entrance and tried to gain admittance, which I tried with no success and I stood in line when coming in, in an orderly manner, speaking to no one, meeting no one that I knew, going to the second balcony because of the enormous and stupendous size of the crowd outside, they were starting them to go upstairs. Seating myself directly opposite from the platform of the speakers, I seated myself in the second row from the back and up until about nine thirty or a quarter of ten, to be as correct as possible, I remained in that seat. I want to emphasize that the place where I was sitting was the second row from the rear. Getting up about nine forty-five, I left my seat, took my bundle of papers in my arm, and started on out. Changing my mind I went back to my seat, and remained there until about ten twenty-five. As I was on my way out, this bundle of four or five—what I want to express here is this: Whatever I have done I consciously want to admit it. I did give four or five leaflets to one, and I was not cognizant, I was not aware at the time that it was Walker, but I had never met Walker before and I handed these four or five to him there on my way out, when Sergeant Silverman and four or five men, all in uniform, rushed over to me and grabbed me by the collar, shouting out, "You are under arrest." Well, I am intelligent enough to know that when I am under arrest, to go along in an orderly way, but I demanded to know why I was under arrest. I asked, "Have you a warrant?" Starting right

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downstairs with the men in uniform, Officer Finan went over to them—this was on the ground floor—and said, "I am from Central Office, here is my shield, I will take care of this man." I want to impress this one particular fact, that all of this time I did not utter a word to anyone in that mass or huge audience. While standing there Officer Silverman and the rest of the officers, not in any way to cast reflection upon the characters of any of these men who have testified against me, but the most violent and the most abusive language was used to me, and I understand that a man is innocent here, regardless of other thoughts until proven guilty. I did not answer them. I held my tongue, knowing that silence is more powerful than expression sometimes, so I remained silent there. Then the prisoner Walker was brought over. I cannot recall who brought Walker over and the prisoner Sternberg. We went down at that time and were held, I believe, near 31st Street for a half hour or more.

In my remarks—in regard to my remarks, "if you don't leave me go, I will call my bunch," what I said, "Don't use any violence on me," because in the past I have been very much interested in labor and I have taken a very active part in directing their law suits and so forth, and I know their methods which they employ with the underdog as it is called in society, and I knew what I may expect; and I knew what was coming, therefore I kept silent. But I did say I didn't want to appear contradictory in my statement, I did say that if you use any violence I will call my crowd irregardless of the fact that the man is in uniform or without uniform, if a man uses violence against me I must protect myself. They took us outside and held us there. A patrol wagon was called. We were taken to the 57th Street station. There when asked if I had anything to say I told them, I refused to answer any questions until my attorney

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appears here. The next morning we were brought before Magistrate—I cannot recall the name—but we were held there.

Mr. Content: Magistrate McQuade, was it?

The Witness: I don't know his name.

A. (Continuing) We were bound over to the Federal authorities, held in \$500 bail; we were turned over to the Federal authorities, Mr. Content appeared in the Court before Mr. Hitchcock and turned us over to the Federal authorities holding us in \$5,000 bail.

Q. Had you ever seen Detective Finan before?

A. I had.

Q. Where? A. At several of the radical meetings and labor meetings.

Q. You know his face, do you? A. I do.

Q. Did you talk to him that night in Madison Square Garden? A. I did not.

Q. Did you say to him, "Are you going to enlist"? Did you say to Officer Finan, "Are you going to enlist"? A. I stated in my statement that I talked to no one that whole evening there. Meeting Mr. Finan at the time of the arrest was the only time that I had seen Mr. Finan.

Q. I know, and understood that you did not talk to anyone, but I want to call your specific attention just the same to the various things. Did you say, "Are you going to enlist" and he answered "yes," and then you said, "If you take our advice you will not enroll, if you will keep away from there there is not enough soldiers or police to make us go; if some of us go we will all have to go." Did you use any such language to him?

The Court: Say yes or no.

Q. (Continued) Mr. Kramer, answer. A. Well, let me—

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Q. Yes or no. A. It is a physical impossibility; I was not near the man.

Q. Did you see Becker at that meeting? A. At the time of the arrest I had not—you mean then?

Q. I mean before? A. I did not.

Q. Were you at any time with Becker, Walker and Sternberg up in the balcony? A. At no time during the meeting.

Q. And you and Becker gave out pamphlets and directed people to the different parts, where they should go? A. I cannot consent to Becker being dragged into this, and therefore I must say no.

Q. Did you ever see Sternberg before his arrest? A. I never have.

Q. Did you ever see Walker before his arrest? A. I never have.

Q. I mean on that day, directly or indirectly? A. I did not.

Q. What did you go to this meeting for? A. I went there for the specific object of distributing these leaflets and advertising our no-conscription meeting and also to listen to the speakers.

Q. Did you give out Exhibit 2? A. I did not, I was not aware of Exhibit 2 being there. I brought along Exhibit 1.

Q. Where did Exhibit 2 come from? A. Where did Exhibit 2 come from? I do not know.

Q. Did you hand out any leaflets at all? A. The four or five that I handed to Walker at the time, not knowing who Walker was.

Q. Did you hand any out before you were arrested? A. Did I hand out any before I was arrested?

Q. Yes. A. Why, at the time of my arrest, I was on my way out.

Q. Were you giving them out on your way out? A. The four or five that I gave to Walker.

Q. Where did you give them to him? A. Down near the stairway on the second balcony.

Q. Did you give any to anyone else? A. I did.

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Q. Where did you give them to Walker? A. Standing near the stairway, as I was on my way out he happened to be standing there.

Q. You saw Officer Silverman there? A. I did not.

Q. Sergeant Silverman? A. I did not.

Q. Did you say to anyone, "Are you going to enroll"? That is here on page No. 21 of Sergeant Silverman's testimony: "Are you going to enroll next Tuesday," and not knowing what Detective Finan's answer was, you added, "Well, the authorities cannot do anything to you, if you don't; the law is unconstitutional, and if you go in there and resist them, they cannot do anything to you. We will be behind you." A. I did not speak to one specific soul during my whole stay in that building.

Q. You say you have seen Detective Finan around at various radical meetings? A. I did.

Q. What kinds, for instance? A. For instance, I have seen him at meetings on 4th Street.

Q. Where? A. On 4th Street and Second Avenue.

Q. Where else? A. I have seen him at various different meetings at the Harlem Casino.

Q. You knew him to be a detective? A. Did I know him to be a detective?

Q. Yes. A. By knowledge I have of human psychology, yes.

Q. No, did you know him to be a detective? A. Did I know him to be a detective?

Q. Yes. A. I didn't know it, not so far as recognition of the man is concerned; but I did from my own judgment.

Q. So that before Madison Square Garden meeting you were of the opinion that Detective Finan was a detective? A. I was.

Q. And you are positive that you did not talk to him at the Madison Square Garden, are you? A. Positive, positive.

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Q. Were you arrested before Walker and Sternberg? A. I was.

Q. Were you brought downstairs? A. I was.

Q. And they were later—Walker and Sternberg were later brought to you where you were? A. Yes, sir.

Q. Did you hear Sternberg say to Walker—let me ask you first, do you talk Yiddish? A. Oh, I speak Jewish; but it is rather in a small sort of petty way, though.

Q. You understand it, do you? A. Slightly.

Q. Did you hear Sternberg at any time talk Jewish? A. Why, when Sternberg was brought down?

Q. Yes or no. A. No, I did not.

Q. At any time? A. No, I did not.

Q. When Sternberg was brought down did he say to Walker, "Did they get any circulars?" and then Walker is alleged to have said, "Yes, got everything I had." And then Sternberg answered in broken English, "Did they get anything on you?" And then Sternberg said to Walker, "Did they overhear any of your conversation regarding instructing the men not to register next Tuesday?" Walker said, "I guess there is a few detectives in that building, and they must have overheard us." Do you remember them saying any such thing? A. I did not.

Q. Was Walker brought down before Sternberg? A. He was.

Q. And then Sternberg was brought in? A. Yes, sir.

Q. And the three of you were together under arrest? A. Yes, sir.

Q. Within a foot of each other or less? A. Why, we were right close together, we were, there.

Q. And if any such conversation would have taken place you would have heard it? A. I would.

Q. Did you use any such expression to Sternberg, "Did they get any of the stuff on you?" A. I did not.

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Q. You have been in the same cell with Sternberg, have you, at times? A. I have not.

Q. In court, in the Police Court, did you hear Sternberg talk English? A. I did not.

Q. Did you hear him give his pedigree in English? A. I did not.

Q. Did you hear him answer questions in Jewish that were asked in English? A. I did not.

Q. Did you hear him before Commissioner Hitchcock talk English? A. No; when Commissioner Hitchcock would ask questions, someone sitting alongside of Sternberg would translate—would inform Sternberg—would in turn put them to Sternberg and Sternberg would answer in Jewish.

Q. Do you know whether the man who was doing the interpreting was Harry Goidel, an attorney? A. I do.

Q. Have you had any agreement to go out and tell people not to register? A. I have not no agreement; I don't believe in coercion.

Q. Now, the No-Conscription League was merely opposed to Conscription? A. It was.

Q. And that was the only agreement of the No-Conscription League? A. It was.

Q. Now, did you hear Sergeant Silverman at the alleged conversation between Sternberg and Walker about having the stuff and telling men not to register and whether detectives—that there was detectives in that building and they must have heard? And did he say this to Sternberg and Walker: "Boys, just as a little favor, a little silent tip; the less you say now the less will be used against you"? A. No, but what Sergeant Silverman did say was that if this was in another country "you would be shot down like dogs."

Cross-examination by Mr. Content.

Q. Mr. Kramer, how old are you? A. I am twenty-two.

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Q. You are twenty-two years old, is that correct?
A. I am.

Q. Where were you born? A. Mr. Content, I have refused to register; when I stand trial I shall answer those questions.

Q. I asked you where you were born?

Mr. Weinberger: Wait a minute; please answer the question.

Q. You are advised by the Court that you may refuse to answer any question on the ground that the question tends to incriminate or degrade you. Therefore, I say to you that the answer to my question as to where you were born will not tend to incriminate or degrade you. A. It is immaterial.

Q. Well, where were you born? A. I was born in Russia.

Q. When did you come to the United States? A. 1894.

Q. Are you a citizen of the United States? A. I am a citizen of the world.

Q. Are you a citizen of the United States? A. I am a citizen of the world.

Q. Have you taken out naturalization papers in the United States? A. I have not.

Q. You do not recognize any allegiance to the United States Government, do you? A. I recognize allegiance to no country and to no nation.

Q. Are you opposed to the Government of the United States, yes or no? A. I am opposed to all governments.

Q. Answer my question yes or no. A. I cannot; I am answering to the best of my information.

Q. Answer my question yes or no, I am not interested in anything else but just this.

Mr. Weinberger: I submit that he is answering.

The Court: Objection overruled.

Mr. Content: I am entitled to have an answer to that question.

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Mr. Weinberger: Exception.

The Court: Answer the question.

Q. Are you opposed—I don't care about other nations—are you opposed to the Government of the United States, yes or no? A. In answering you, if your Honor will permit me to say so, I am opposed to all governments which would not discriminate but take in——

Q. I ask you again, are you opposed to the Government of the United States, yes or no? A. I am opposed to all governments.

Q. Does it include the Government of the United States? A. It does, all governments.

Q. It would? A. Yes, sir.

Q. You do not recognize the authority of the law, do you? A. I recognize the ethical authority, not the legal authority.

Q. Now, if you don't like a law that the Congress of the United States has passed, and to which the President has affixed his signature, you feel yourself privileged to disobey it, do you? A. I feel myself privileged, I believe——

Q. Answer my question; do you feel yourself privileged to disobey any law of the United States that you do not care to obey? A. If it states that I should murder, I feel that I should disobey it, yes.

Q. Whenever you don't like a law of the United States you feel yourself at liberty to disobey it, don't you? A. Where it interferes with human rights.

Q. Did you make any remarks about the President of the United States on the evening of May 31st? A. I did not speak to anyone in the world.

Q. Spoke to no one; you kept silent? A. I did.

Q. Did you see anyone else in the Madison Square Garden giving out pamphlets? A. Did I?

Q. Yes. A. Why, no; I was more interested in the speeches myself.

Q. Did you see anyone giving out pamphlets? A. I did not.

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Q. You say that you only gave directly three or four? A. Three or four.

Q. And with that physical fact or explanation, can you explain to us how these pamphlets were all found in Madison Square Garden? Have you any means of explaining that to us? A. Why, there may have been many of these individuals that would have brought the pamphlets for distribution, not to my knowledge.

Q. You did not see anyone distribute them? A. I did not.

Q. Mr. Kramer, you said that you only had these leaflets announcing the meeting. Do you know where these pamphlets came from, of the type of Government's Exhibit 2? A. I am aware of the Exhibit No. 2; I am fully conscious of what it is, yes.

Q. Have you seen it before? A. I have never seen it at Madison Square Garden.

Q. Never saw any of these? A. I have seen them, but not at Madison Square Garden, no, sir.

Q. You believe in the principles announced by that pamphlet? A. Do I believe in the principles that are here announced?

Q. Yes. A. I believe in the principles of anything that stands for human rights.

Q. Wait a moment. Wait. Do you believe in the principles announced in that pamphlet, Government's Exhibit No. 2, with which you are familiar? A. I am a believer in the principles?

Q. Yes. A. Well, where I am concerned, yes.

Q. It is the purpose of your League to resist Conscription, isn't it? A. The purpose of our League is to resist Conscription mentally; it is our—

Q. What is that? A. Mentally, yes.

Q. If you were forcibly taken with the army, would you resist by force? A. Would I resist by force?

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Q. Yes. A. No, I would allow them to run me against the wall and shoot me before I would shoot my fellow men.

Q. Well, now, Mr. Kramer, you testified on direct examination that you gave three or four pamphlets to Walker. Is that correct that you gave three or four pamphlets or leaflets that you referred to, to Walker? A. I did.

Q. I want to call your attention to your testimony before the Commissioner in response to a question of your counsel, Mr. Weinberger, at page 46: "Did you ever see them"—meaning Sternberg and Walker—"at any meetings of yours before? A. I never have. Q. Did you give them any pamphlets? A. Not to my knowledge." And today you have testified you did give them to Walker? A. I did give them to Walker?

Q. Yes. A. I believe, Mr. Content, at that hearing I expressed the words that I gave some pamphlets as near as my knowledge was concerned.

Q. I will read the questions and answers to you so there will be no mistake. This is the examination by your counsel, Mr. Weinberger, referring to Sternberg and Walker: "Q. Did you give them any pamphlets? A. Not to my knowledge." Did you make that answer to that question? A. Did I make that answer?

Q. That answer to that question? A. I think in answer to that question I rather stated I gave them to Walker as the man who stood there after the arrest and not before the arrest.

Q. After the arrest? A. I am not cognizant of giving them to Walker as the man who stood there.

Q. Were you not cognizant of that same fact when you were before United States Commissioner Hitchcock? A. I was not.

Q. When did you just discover that it was Walker that you had given them to? A. When did I discover it?

Q. Yes. A. After I spoke to Walker.

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Q. Wasn't it after you heard Walker testify in this court for this first time that you made up your mind to admit that? A. It was not.

By the Court.

Q. You first discovered it when? The night of the arrest? A. The night of the arrest?

Q. Yes. A. No, after the first hearing.

Q. You knew you had given it to somebody, didn't you? A. I knew I had given it to someone.

Q. You understand my question, you knew you had given these pamphlets to some gentleman? A. Yes.

Q. Very good. Now, you and Walker with the others were arraigned that night in the Police Court, weren't you? A. We were.

Q. Didn't you know then to whom you gave the pamphlets? A. Why, no. You know in such a moment as that, there is a disturbance and we see lots of people.

Q. You didn't know it? A. I didn't know at that particular moment, there was many people there all around.

Q. You went before the Commissioner, and according to the minutes you said in effect, that you did not give any pamphlets to Walker? A. As near as I can remember, according to my knowledge, it is after the hearing before Commissioner Hitchcock.

Mr. Weinberger: The testimony is: "Did you give them any pamphlets? A. Not to my knowledge."

Mr. Content: That is the question and answer which I have read three or four times.

By Mr. Content.

Q. In this trial is the first time that you said you gave them to Walker, isn't it? A. It is.

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Q. There is no misunderstanding, is there, you meant before the Commissioner to answer that you could not say that you did not have the knowledge to say that you had given them? A. I wanted Commissioner Hitchcock to understand that at that time, that particular time, I could not specify the individual that I gave them to.

Mr. Content: Continuing to read further along on page 46: "And they had nothing to do with the giving out"—referring to Sternberg and Walker. "Q. And they had nothing to do with the giving out of these pamphlets? A. They had absolutely nothing to do with it. Q. You are absolutely positive of that? A. I am. Q. You don't know anything about these men"—referring to Walker and Sternberg—"being opposed to Conscription? A. I don't. I am aware of nothing about their opinions." That is still your testimony?

The Witness: Yes.

Q. Was there any general distribution of pamphlets? A. Was there any general distribution?

Q. Yes. A. Why, I don't know.

Q. That you noticed or that you saw? A. That I saw, no, I came there alone and came out alone.

Q. And you say that Walker is the only person that you gave any to? A. No.

Q. Now, you had? A. Yes.

Q. Will you permit me to read something of your answer on cross-examination by me before Commissioner Hitchcock: "Q. Is it true that you and Becker were giving out pamphlets in the Garden? A. We were. Q. You were? A. I had the bundle under my arm at the time of my arrest. Q. Before your arrest did you give any pamphlets to anyone? A. Not to one single individual. Q. I ask you have you given pamphlets to anyone? A. There was a distribution. Q. Let me ask you this

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question, and I mean it to be a fair question: Did you give any number of pamphlets to any one person or one to each person? A. One to each person."

A. Have I in any way refused the statement that I may have given them out? What I said in direct question, too, was I had given anyone, and as near as I can understand that question, what is trying to be brought out by the construction of it is that any one particular man——

Q. Never mind the legal aspect of it. Answer my question. I ask you this question, I asked you whether you gave a number of pamphlets to any one person? You heard Finan's testimony that you and Becker were giving a number to different people, you heard that before the Commissioner and here, didn't you? A. I did.

Q. After that testimony I asked you whether you gave a bundle of pamphlets to anyone, that is, more than one to one person?

Mr. Weinberger: Oh, no, that is not a definition of a bundle.

Mr. Content: I didn't mean a bundle, I meant more than one.

Mr. Weinberger: That is what is in your question.

Q. "Q. Let me ask you this question, and I mean it to be a fair question: Did you give any number of pamphlets to any one person or only one to each person?" And you answered that: "One to each person." Is that correct? A. How could it have been possible——

Q. Never mind now arguing how it could be done, did you make that answer? A. It is not correct.

Q. It is not correct? A. No.

The Court: The question that was read and your answer to the Commissioner.

Mr. Content: It was before the Commissioner and to me.

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The Witness: Words to that effect, no, because it would have been a physical impossibility.

Q. Never mind that. Is the record wrong then?

A. Yes, the record is wrong.

Mr. Weinberger: Read the next question and it will show you that it is wrong.

Q. "Q. Never gave any bundle to anyone at any time? A. No, I did not." Did you say that? A. Did I say what?

Q. Now, I asked you this, whether you—I will read you this question again: "Q. Let me ask you this question, and I mean it to be a fair question: Did you give any number of pamphlets to any"—and a number to mean more than one— A. Oh, sure.

Q. It means more than one and——

Mr. Weinberger: I object to the form of the question and I ask Mr. Content to read it all.

Mr. Content: It is an intelligent question.

The Court: Objection overruled.

Mr. Weinberger: Exception.

Q. "Did you give any number of pamphlets to any one person or one to each person?" You understand the question as I have pointed it out? A. Yes.

Q. In other words, does it convey to your mind a distinction between giving more than one to one person or giving out one at a time? Do you understand me? A. I should say so.

Q. Did you make this answer: "A. One to each person"? A. I did not.

Q. All right, you say you didn't. You, to-day, have said that you say you gave three or four to Walker? A. As I was going out; but according to my knowledge I expressed before Commissioner

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Hitchcock that I was not aware that it was Walker.

Q. Now, the man you now know to be Walker, you say you gave four or five to? A. Yes, sir.

Q. Why did you give him four or five? A. Why?

Q. Yes. A. Well, as a general rule, when I go to a meeting and I know it is forbidden to give out pamphlets and I am warned by the authorities, I abide by that rule; but as a general rule when going out one happens to be in a different state of mind, and not aware of what I am doing, I done it, in a moment of not being aware of it.

Q. Since you don't know what you were doing, I won't ask you anything more.

By Mr. Weinberger.

Q. The next question, the one I wanted Mr. Content to read to show the continuity of this, is this question: "Q. You never gave any bundle to anyone at this time?" And your answer is: "A. No, I did not." You still insist you did not give any bundle out? A. Yes.

The Court: Let me see the package that is in evidence as having been taken from the witness.

(Same handed to the Court.)

By the Court.

Q. Now, Mr. Kramer, Government's Exhibit No. 3 is a package of papers that the testimony shows was taken from you. Do you say it was taken? A. Government's Exhibit 2?

Q. No, no. Did you have this bundle, this is called Government's Exhibit No. 3, and do you say that this was taken from you or wasn't it? A. Not that bundle, no.

Q. This was not taken from you? A. No, that was not taken from me. I had nothing but a leaflet advertising No-Construction meeting.

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Q. Well, then you flatly contradict the testimony of the Government's witnesses in that regard, is that it? A. I certainly do, your Honor.

Q. And you say that you did not have in your possession that night any of Government's Exhibit No. 2? A. I did not.

Q. And that the testimony that No. 2 Exhibit were found with No. 1 in your possession, on your person, is not true? Yes or no. A. Well, now, I want to make this clear. I want to have that question to be explicit.

Q. My question is whether the testimony to the effect there were found on your person or in your possession circulars, both known as Government's Exhibit 1 and Government's Exhibit 2, whether that testimony was correct or incorrect? A. Will you hold up Exhibit 2 for me?

Q. Yes, here it is, Exhibit 2, you can look at it yourself (handing same to witness). A. No, it was not found on me; Exhibit 1 was found on me.

Q. How many of Exhibit 1 were found? A. How many?

Q. Yes. A. Well, I should judge about from 150 to 200.

Q. Let me ask you, you have seen Exhibit No. 2 before the night of the Madison Square meeting, haven't you? A. Yes.

Q. Where did you see it? A. Where have I seen them?

Q. Yes. A. Well, I have seen them in various, different places.

Q. Well, give us some. A. I have seen them out on the street, I have seen them at lectures, at meetings.

Q. Well, anywhere else? A. No.

Q. Did you ever see them at 20 East 125th Street? A. Have I ever seen them at 20 East 125th Street?

Q. Yes. A. When I went there it was not my business to search the papers.

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Q. I asked you whether you had ever seen these there? A. No.

Q. You never did see them there? A. I never did.

Q. What is 20 East 125th Street? A. What is it?

Q. Yes. A. It is a literature place.

Q. A literature place? A. Quite a publishing place.

Q. Isn't it the headquarters of the No-Conscription League, or one of its offices? A. It may be one of its branch offices.

Q. Well, don't you know? A. Why, no, I know very little about it.

Q. Have you been there? A. Have I been there?

Q. Yes. A. Yes.

Q. How often? A. Oh, about three different meetings.

Q. And you don't know what the place is? A. I believe, your Honor, I have just told you that it was a publishing place and a literature place.

Q. I mean in connection with the No-Conscription League? A. I have admitted to you that it was the No-Conscription League that met there.

Q. Well, do they have an office, or what is it? A. They have books up there that they sell.

Q. Have they a room there? A. Yes, they have a room there.

Q. And did you see this Exhibit No. 2 there? A. No.

Q. You never saw that there? A. I never have seen it there.

Q. Where did you get Exhibit 1 from when you went to the Garden? A. Where did I get Exhibit 1?

Q. Can't you answer without repeating my question? A. Well, I want to answer you as you ask the question.

Q. Well, very well then, answer it. A. I got it at the office.

Q. Where? A. 20 East 125th Street.

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Q. Who gave it to you? A. Who gave it to me? I took them myself.

Q. Were they lying there on the table? A. They were lying on the floor.

Q. And how many had you taken, roughly? A. Roughly? Oh, 250. I was giving them out, I was giving some out along the street.

Q. Now, Mr. Becker testified that there was an executive committee meeting. Did you hear him testify to that? A. No, I did not.

Q. Did you hear him testify that there was a committee of eight, of which you and he were members? A. No, I heard him testify that there was, but—was a committee to give out.

Q. Did you belong to that committee? A. Did I belong to the committee? I had volunteered to go on the committee.

Q. Did you belong to the committee? A. I had volunteered, your Honor.

Q. Well, don't you know whether you belonged or didn't belong? A. Why, in so far as individually go there, I went there upon my own individuality, no one asked me to go.

Q. I am talking about that committee, and I asked you if you are a member of that committee there? A. How many were on the committee? I don't know.

Q. Was Mr. Becker a member of that committee? A. Was Mr. Becker a member of the committee?

Q. That is what I asked you. A. Why, it is the custom.

Q. Don't make a speech. Answer yes or no. A. I must explain to you, you asked that question.

Q. If you cannot answer, say so. A. I can answer if you allow me. It was always this way, people would go on committees, would volunteer to go, we had no vote.

Q. I am not talking about voting or volunteering. I want to know whether Becker was on that committee with you? A. He may have been, he may

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have come of his own wish, may have volunteered to go on it.

Q. Didn't you know? A. I was not aware of it, no, there are so many people who——

Q. You never knew of that? A. That Becker was to give out at the meeting.

Q. I am not talking about the meeting. I want to know whether Becker was on the same committee with you of the No-Conscription League? A. I am not aware of it.

Q. You didn't know that? A. I didn't know that.

Q. Did you hear him testify that at this trial?

A. I could hear him testify? Did I hear him?

Q. On that point? A. Why, to tell you the truth I have not been paying much attention to the testimony.

Q. Did you hear him testify to that? Yes or no. A. I did not.

Q. How long have you know Becker? A. How long have I known Becker?

Q. How long have you known Becker? A. Well, I should say about, to be precise and to the point, about three months.

Q. How long prior to the Madison Square meeting did you see Becker? A. About a week.

Q. When did you first hear that the Madison Square meeting was to be held? A. Why, the meeting was held on a Thursday, and I heard about it on a Tuesday.

Q. On a Tuesday, were you told—that is, prior to this time, if I understood what you said, prior to your going to the meeting you had—had you ever distributed Exhibit No. 2 anywhere? A. Exhibit 2?

Q. Yes. A. No.

Q. But you have had the Exhibit No. 2 in your possession? A. Why, I have had one in my possession to read it, yes.

Q. Only one? A. Yes.

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Q. So if I understand your testimony correctly, there are—prior to the Madison Square meeting you never had—you only had one copy of Exhibit No. 2? A. One copy of Exhibit No. 2—not in my possession prior to Madison Square Garden. I had seen No. 2.

Q. I am talking of the fact of having it in your possession? A. No, I never have had that in my possession.

Q. Prior to the meeting at Madison Square Garden, at any time at all, you never had Exhibit No. 2 in your possession? A. No.

Q. What did you mean before when you said you had one of them? A. One of them?

Q. Yes. A. I mean, in seeing someone read Exhibit No. 2, and I took it out of his hand and read it and replaced it back into the owner's hand.

Q. Where was that? A. Where? Out on the street.

Q. Whereabouts? A. Whereabouts?

Q. If that incident is so clear, tell us where it was. A. Why, it was at a mass meeting, and that meeting was held at 10th Street and Second Avenue.

Q. What night? A. I believe it was on the night, Thursday was the 31st, and that would be May the 31st—

Q. Well, when was it? A. On the 28th, on a Monday night, to be correct.

Q. Well, some stranger was reading a paper like Exhibit No. 2? A. In the audience, yes.

Q. And he gave it to you? A. I asked him for it and read it.

Q. You read it, and then returned it? A. Returned it to him.

Q. That is the only time you ever had No. 2 in your possession? A. Yes.

Q. How many days prior to the Madison Square meeting had you seen Exhibit No. 2? When did

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you first see it? A. Why, that would make it on a Monday night.

Q. I thought you said you had seen them up in 125th Street? A. Exhibit No. 2?

Q. Yes. A. I have not testified to that extent, I have not.

Q. Is it your testimony, now, that you never saw Exhibit No. 2 excepting on that one occasion? A. Excepting on that one occasion on Monday at the time of a mass meeting on 10th Street and Second Avenue.

Q. And is it your testimony, now, that you never saw the Exhibit No. 2 at 125th Street? A. Are you speaking of Exhibit No. 2 as the leaflet that is advertising the No-Conscription meeting?

Q. No. A. At Hunt's Point Palace.

Q. No, you know what Exhibit No. 2 is. A. Exhibit No. 2, I gave a statement here——

Mr. Content: This is the original one, this one down there.

A. (Continuing): I gave a statement of that, I did not see Exhibit No. 2 until Monday night, on the 28th, at 10th Street and Second Avenue.

Q. In other words, did you never see Exhibit No. 2 at the 125th Street place? A. I did not.

Q. Is that correct? A. That is correct.

Q. Now, at the 125th Street place, if I get correctly what you have testified to, this literature was scattered all over the place, wasn't it? A. The literature in the form of books, in the form of pamphlets, this is not literature, that is, literature is not leaflets.

Q. Call it leaflets if you like. That was scattered over the place, wasn't it? A. The leaflets, Exhibit No. 1?

Q. Yes. A. Yes.

Q. And among the leaflets that you saw there you never saw No. 2? A. It was never brought to me, I know.

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Q. Well, now, this Monday night you spoke about you read No. 2, did you? A. I did.

Q. Did you read it carefully? A. I did.

Q. Were you thoroughly familiar with its contents? A. Was I thoroughly familiar with its contents?

Q. Yes. A. Why, in so far as the ideas were concerned, I had become familiar with them, yes, but not as to whom had printed it.

Q. I didn't mean that, you know what I mean. Did you know what No. 2 was about? A. I know it was about No-Conscription, yes.

Q. You remembered that all the way through, I presume? A. I did.

Q. And you read it all? A. I did.

Q. Didn't miss any of it? A. I did not.

Q. You made yourself thoroughly familiar with it? A. Yes, sir.

Q. And you read that part which says, recites the Conscription Law and so forth, did you? A. I read it all?

Q. Including that? A. I read it all.

Q. Including that, I say? A. I read the whole leaflet.

Q. This is the last question, I think, I want to ask: Prior to the Madison Square Garden meeting, how frequently had you and Becker seen each other? A. Well, I believe I had met Becker prior to the Madison Square Garden and the No-Conscription meeting, I used to meet him at our lectures on Sunday nights.

Q. How often was that? A. About once a week, just to look at him, and say hello and pass on.

Q. Is that the only converse you ever had with him? A. Yes.

Q. That is, just said how do you do and passed along? A. Yes.

Q. Never did anything else or say anything to him? A. Nothing personal.

Q. Only say hello to each other? A. Yes.

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Q. And you never knew he was on the same committee with you? A. I did not.

Q. Never knew that? A. I did not.

By Mr. Weinberger.

Q. That Sunday night you referred to, that is the Sunday night meetings held on the avenue and other places? A. They were frequently addressed by Emma Goldman.

Q. At 126th Street and Lenox Avenue? A. 125th Street and Lenox.

Q. That is where you met—Becker came there to the meetings, did he? A. He came there alone and I met him.

Q. You saw him at some of the meetings of the No-Conscription League? A. Yes, sir.

The Court: We will now take a recess until quarter past two.

(Whereupon a recess was taken until 2.30 P. M.)

AFTERNOON SESSION.

2.30 o'clock P. M.

TRIAL RESUMED.

Mr. Weinberger: The defendants rest.

LAWRENCE BEVINS, recalled in rebuttal, on behalf of the Government, testified as follows:

Direct examination by Mr. Content.

Q. Mr. Bevins, you testified on the direct case for the Government? A. Yes, sir.

Q. Did you have any conversation with the defendant Sternberg at all? A. Yes, sir.

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Q. In the Madison Square Garden? A. Yes, sir.

Q. Now, in what language were these conversations conducted? A. In English, the only language I speak.

Q. The only language you speak? A. Yes, sir.

Q. And did he answer you? A. Yes, in broken English.

Q. In broken English? A. Yes.

By the Court.

Q. What did you ask him? A. I asked him, in taking the papers from him, I asked him where he got the pamphlets and he said he didn't know where he got them. I asked him what he was going to do with them and he said he didn't know.

By Mr. Content.

Q. And that was in what language? A. That is all spoken in English.

Q. You saw the witness Jacob Schoenfeld, the witness that was called here and testified this morning? A. Yes, sir.

Q. Is that the man that you had reference to in your direct testimony as being around with Sternberg? A. No, sir.

Q. Are you sure of that? A. Absolutely, because the man that was with Sternberg had black curly hair, dark features.

Q. Did he look like this witness Schoenfeld? A. No, sir.

Q. You saw them there? A. Yes, sir.

Q. Did you at any time in Madison Square Garden, to your knowledge, see Schoenfeld? A. No, sir.

Cross-examination by Mr. Weinberger.

Q. How long were you in the Garden? A. I went there about the beginning of the meeting.

Q. At what time; at the beginning of the meeting? A. Yes, sir.

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Q. And did you take a seat immediately? A. Yes, sir.

Q. How many people did you see before you took a seat? A. Well, there was a few on the ground; I didn't notice about.

Q. How many did you speak to? A. I could not tell you; I have forgotten.

Q. About how many? A. I could not tell you.

Q. Was it fifty or one hundred? A. I could not tell you how many I spoke to.

Q. How many officers or guardsmen were there? A. I did not count them.

Q. How many were with you? A. With me personally?

Q. Yes. A. The whole bunch of them were all together.

Q. How many were in the bunch? A. I could not tell you how many there was.

By the Court.

Q. Was there half a dozen or a dozen? A. Well, about fifteen or twenty.

The Court: He has answered your question.

Mr. Weinberger: I am just doing this in reference to Schoenfeld to show these men that this man has not got as good a memory as he says he has.

The Court: He stated fifteen or twenty.

Mr. Content: I think, if the Court pleases, that Mr. Weinberger should confine his cross-examination to the direct examination—rebuttal.

By Mr. Weinberger.

Q. How many people—after you left that seat—how many people did you pass on the way up to the balcony? A. Why, the building was not so

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crowded—the balconies were not so overcrowded that I could not get through them.

Q. You passed quite a few people on your way up? A. Up in the balconies?

Q. I mean on the way up. A. There was quite a few on the ground floor and quite a good many passing up at that time.

Q. All of whom you passed? A. Some were going in the same direction, some were passing me.

Q. You would not remember any of the people that you passed, would you? A. No, very few of them, anyway.

Q. Did you see into their faces? A. Very few of them, and I would be not likely to notice just who I passed.

Q. You would not be likely to remember any of the people whom you passed? A. Not unless something came up that drew my notice to them.

Q. And unless something happened in reference to a particular individual, so far as you were concerned, that you were interested in, you would not remember him at all, would you? A. No, sir.

Q. And when you got up to the balcony where you arrested Sternberg, how many people were there in that place? A. In that section there was the two of them, Sternberg and his companion.

Q. What do you mean, in that section? A. Between two posts in that section of the balcony.

Q. Were Sternberg and Schoenfeld sitting in the same seat, side by side? A. I could not say it was Schoenfeld; I don't know the name of the person.

By Mr. Content.

Q. You saw Schoenfeld on the witness stand. Was that the man that was there? A. It was not that person.

By Mr. Weinberger.

Q. Was he sitting alongside of Sternberg? A. The one that was sitting alongside was not Schoenfeld, though.

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Q. You heard Schoenfeld testify that he was not sitting alongside of Sternberg, didn't you? A. There were only two men in that section when I saw them from below, and when I was up there there was only two men.

Q. Did you see him, Schoenfeld, here? A. Yes, sir.

Q. Did you hear him testify that he stood right in front of Sternberg? A. He could not have stood in front, because Sternberg was in the front seat.

Q. You are positive of that? A. I am positive of that; that is sure.

Q. But you say that you remember that Schoenfeld was not there? A. He was not there when I looked up in the balcony from below, and he was not there when I went up there.

Q. And when you arrested Sternberg were you not only interested in Sternberg? A. The other man that was sitting beside him made a remark and therefore I noticed him.

Q. What did he say? A. He tried to answer for Sternberg, about these papers, and I told him to keep still, I hadn't anything to do with him; that is the reason I noticed him.

Q. He had no papers? A. Who?

Q. The other man? A. No; I didn't look to see if he did or not.

Q. How many people were behind Sternberg in that section at that time? A. Nobody but myself.

Q. You mean to say that in that entire section everybody had gone? A. Between those two posts, yes.

Q. Will you describe the part between the two tiers? A. Up in the balcony on the north side of Madison Avenue, on the north side, the 27th Street corner, it is practically what it was, between two posts, two posts in front.

Q. How many seats are there in that section? A. There is about five seats all told, if I am not mistaken about that.

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Q. And there was not anybody in the entire section except two men? A. Only two men; it is a bad place, so far as the speaker's standpoint is concerned, and only two men were in the place.

Q. How far were you away from Schoenfeld this morning in the court room here? A. I was back here by the door; he passed me back here by the door, and I saw him also.

Q. That is the only time you saw Schoenfeld, when you arrested Sternberg? A. I didn't see Schoenfeld.

Q. The man that you say was with Sternberg, you only saw him for a moment? A. Yes.

Q. Only saw him for a moment? A. I saw him that time I placed him under arrest; I sat down back of the two of them, and I had a chance to notice the two of them.

Q. Then you placed Sternberg under arrest and took them downstairs? A. Yes, sir.

Q. That is the last you saw of that man? A. Yes, sir.

Q. You heard Schoenfeld testify he was with—you heard Sternberg testify that he was with Schoenfeld, and when Sternberg was a witness you heard him so testify? A. The man who stood there was me; the man who was with Sternberg was sitting down beside him; Sternberg did not sit in back of him, and it was not the same man on the witness stand.

Q. Did you hear Sternberg talking to anyone else except to you upon the balcony? A. No.

Q. You didn't hear him talk anything to anybody in the balcony there? A. No.

Q. Didn't hear him talk English before the Commissioner at all? A. No.

Q. You were there, weren't you? A. Before the Commissioner?

Q. Before the Commissioner? A. Yes.

Q. For the first time they were brought up before the Commissioner, the four of them, I mean? A.

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I didn't pay attention to them; I would not say, as I was not paying attention to them, and I don't know whether he spoke in English or not.

Q. You were only three feet away from the witness when he was testifying? A. At what time?

Q. At the time before the Commissioner? A. I don't know whether he spoke English or not; I didn't pay any attention.

Q. I say you were only three feet away while the witnesses were examined? A. I don't know whether three feet or six feet.

Q. Will you describe the man you say was with Sternberg? A. The man who was with Sternberg had dark, curly hair, you know, that is dark hair.

Q. A little louder, please. A. The man with Sternberg had very curly hair and dark features; black hair, perfectly black, and dark hat.

Q. How was he dressed? A. If I am not mistaken, it was blue.

Q. Blue suit? A. Blue suit.

Q. Have a regular collar on, a stiff collar on? A. I didn't notice.

Q. Notice anything else about him distinctive? A. No, sir.

Q. You still insist it was not Schoenfeld? A. I do.

Redirect examination by Mr. Content.

Q. When Schoenfeld was on the witness stand you were brought right up here and stood in front of him? A. I came up and spoke to you.

Q. You had a good look at him? A. I saw him and looked at him direct, and he was not the same man.

Recross-examination by Mr. Weinberger.

Q. You never saw the man that was with Sternberg before that night, that particular day? A. No, sir.

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BENJAMIN SILVERMAN, recalled as a witness in behalf of the Government in rebuttal, testified as follows:

Direct examination by Mr. Content.

Q. You have been previously sworn, haven't you, Silverman? A. Yes, sir.

Q. Sergeant Silverman, you testified to a conversation between Sternberg and someone else? A. Yes, sir.

Q. In what language was that conversation carried on? A. Broken English.

Q. Did you understand the language that he used? A. I did, sir.

Q. Other than English? A. Yes, sir.

Q. What? A. I understand Yiddish and French.

Q. If that conversation had been in Yiddish you would have understood it? A. I would, sir.

Q. Just the same as if it had been in English? A. Yes, sir.

Q. You say now under oath that that conversation was not—was in English? A. Yes, sir.

Q. Did you hear Sternberg—did you go to the Commissioner's Court? A. Yes, sir.

Q. Were you there when these witnesses testified? A. Yes, sir.

Q. Did you go to the Magistrate's Court? A. Yes, sir.

Q. Were you there when the pedigrees were taken? A. Yes, sir.

Q. Did you hear Officer O'Toole take the pedigree of Sternberg? A. I can't recall the officer's name.

Q. Is O'Toole in court? (A man stands up.) A. Yes, sir, that is the officer.

Q. Did you hear him talk to Sternberg and question him as to his age and so forth? A. Yes, sir.

Q. What was that talk in, what language? A. In the English language.

Q. Was Yiddish used at any time? A. No, sir.

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By the Court.

Q. So that the matter may be clear: Who took that bundle from Kramer? A. Officer Finan.

Q. In your presence? A. Yes, sir.

Q. And you know that this bundle has been marked Government's Exhibit 3? A. Yes, sir; he had the larger pamphlets nearest his elbow, and the smaller ones nearest his wrist, and he was giving them out.

Q. Was Exhibit No. 2 in his possession? A. Yes, sir.

Q. And Finan took it away? A. Yes, sir.

Q. There is no doubt about that? A. No doubt.

By Mr. Content.

Q. That is the same exhibit you saw over before the Commissioner? A. Yes, sir.

Q. With the same exhibit number and everything else? A. Yes, sir.

By the Court.

Q. And a distinct bundle was made of this stuff? A. Yes, sir, and his name—we wrote his name on it at once; that is, it was written on by Finan.

Q. His name was written by Finan in your presence on this bundle? A. Yes, sir.

By Mr. Content.

Q. And in the presence of the defendant also? A. Yes, sir.

Cross-examination by Mr. Weinberger.

Q. There is only one question: Isn't it a fact that Mr. Becker translated the questions and also the answers in the Police Court? A. Mr. Becker was not there when the pedigree was taken.

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LOUIS P. KORNDORFER, called as a witness in behalf of the Government in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Mr. Korndorfer, you are a keeper in the City Prison in the City of New York? A. I am.

Q. Sternberg, stand up, please. (The defendant Sternberg stands up.) Do you know this man? A. I do.

Q. Were you there when he was brought in as a prisoner at the City Prison? A. I was.

Q. Did you take his pedigree? A. I did.

Q. What questions did you ask him? A. The questions that are on the pedigree stamp.

Q. Are the answers to the stamped questions in your handwriting? A. Yes, sir.

Q. Do you remember the answers without refreshing your recollection by looking at them? A. No, sir, I would have to refer to those.

Q. Look at them and see if they refresh your recollection?

By the Court.

Q. I suppose you have a great many pedigrees? A. I do.

Q. You cannot remember any particular one? A. No, I cannot.

By Mr. Content.

Q. That is in your handwriting (handing same to witness)? A. It is in my handwriting.

Q. Look at that and see if it refreshes your recollection? A. Yes, sir.

Q. No. 2 is Sternberg on that commitment? A. Yes, sir.

Q. The pedigree is taken on the back of the commitment of the United States Marshal, is that it? A. Yes, sir.

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Q. Look at No. 2, Sternberg being the second name on the commitment, and will you tell me what questions you put to him and what answers he made? A. Well, the pedigree stamp reads as follows: "Address" and the answer in English, "94 Rutgers Street. Age, 24" in English. "Color," he was white. He didn't answer that. That is a description we put down as the case comes before us. "Male or female," the stamp says as to the fact male or female and we put down "M." "Occupation: Hatter. Manufacturer of hats," something like that.

Q. What did you put down? A. "Hat." we put down, just an abbreviation. "Nativity: Russia." Answered in English. "Citizen of the United States. No Religion. Hebrew. Married, single, widow or divorced. Single. Do you read and write. No. Are you a moderate drinker. No. Do you smoke. No." That is all.

Q. Did you ask these various questions in the English language? A. I did.

Q. And were the answers made to you by Sternberg in the English language? A. Yes, sir.

Q. Did you use any other language? A. No, sir.

Q. Did you employ an interpreter? A. No, sir.

Cross-examination by Mr. Weinberger.

Q. Where was that done? A. Where?

Q. Yes. A. Where was it done?

Q. Yes. A. In the City Prison, Manhattan, at the time of his admission.

Q. When? A. The time is specified on the commitment.

Q. When was that, what day? A. On that date, June the 1st.

Q. When he was sent over by the Commissioner? A. Yes.

Q. And who was there at the time that you took that pedigree there, were the four of them there?

A. The four of them came in at once.

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Q. Took all their pedigrees at once? A. One at a time.

Q. They were all present when you took each one's pedigree? A. Yes.

Q. And you didn't ask anyone to translate and no one translated for him? A. No, sir.

Q. Did Becker or Kramer or Walker when you asked these questions tell Sternberg what to answer? A. No, sir.

Q. Or what they meant in the Yiddish language? A. No.

Q. Do you understand the Yiddish language? A. I understand German.

Q. Then I suppose you have got some idea when a man talks Yiddish? A. Yes, sir.

Q. And Sternberg did not answer in Yiddish? A. No.

Q. He did not answer in Yiddish? A. He did not.

Q. And the other three defendants were there at the time? A. Yes, sir.

JOHN J. HANLEY, called as a witness in behalf of the Government in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Mr. Hanley, you are the Warden of the City Prison? A. I am.

Q. And were you the registrar designated by the Board of Elections to take the registration under the Draft Act of persons within conscriptive ages who have been incarcerated in the City Prison at that time? A. I was by the Commissioner of Corrections.

Q. Did you get his personal registration— A. Yes—

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Q. —of every person within the conscriptive ages? A. I did, with two assistants that went around with me.

Q. You were taking every prisoner personally? A. I did, I spoke to them.

Q. You know the defendant Sternberg? A. Yes, sir.

Q. Did you question him? A. Just the same as the others, just the same.

Q. I mean in English, the same as the others? A. Yes.

Q. Now, did you have an interpreter there, if necessary? A. Yes, one of the clerks, Deputy Warden, was a man of the Jewish race.

Q. He speaks German and Jewish? A. Yes, sir.

Q. What is his name? A. Julius Bramer.

Q. Did you ask any questions of the defendant Sternberg not in the English language, there were twelve questions? A. I did.

Q. Did he answer any of the twelve in English? A. He did, the first two.

Q. The first two? A. Yes.

Q. And as to the others? A. The third one he was muddled on and then I referred the matter to Mr. Bramer.

Q. But he did speak some English in your presence? A. In my presence he gave his name and address and when we got to his nativity, we had to get this interpreter, I cannot quote them, but you can refer to the questions.

By the Court.

Q. The first question is "name in full"? A. Name in full.

Q. And the second one is the house address and the third is the date of birth? A. I tried to take him along, by suggesting whether it was summer or spring or winter, and finally I turned him over to Mr. Bramer to find out before we could get any answer.

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By Mr. Content.

Q. It is not your contention that he spoke entirely in English, but during the time he spoke some English to you? A. No, sir, it was enough so I could understand.

Q. Enough so that you could understand him? A. When I came to ask the other questions I couldn't seem to make a clear understanding of them and so I observing that asked the services of Mr. Bramer.

Q. Go ahead. A. And I asked him before he signed it, did he understand the questions.

Q. You asked him that in English? A. Yes.

Q. What did you ask him again, Warden? A. "Do you understand all the questions and the answer that are there?" and he said, "Yes." I said, "Sign it," and he signed it there in Jewish.

Q. You remember asking that question? A. Positively. I asked every one that.

Q. And when he said he understood all the questions he signed it in Jewish? A. Signed at the bottom of the card, that is, all the questions I had asked him, all of them.

Cross-examination by Mr. Weinberger.

Q. When you told him to sign, didn't you point to where he was to sign? A. Yes.

Q. You did point out where to him? A. Yes. There was quite some writing and I indicated to him where the line was for him to sign on, and he signed on that line.

Q. And then the defendant signed before you? A. He certainly did.

Q. Right on the line where you pointed? A. Right on that line, after all of the questions had been asked and he answered them.

Q. You gave him a pen and said, "Sign there," didn't you? A. Yes, sir.

Q. You indicated where he was to sign? A. Yes.

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Q. Would a man do that even though he could not understand English, when you gave him a pen and signified that he was to put his signature down? A. He was not near enough to the others when they were signing to see what they were doing and when they got through at the table they went away.

Q. And you did that without anyone else being there? A. They came in one at a time.

Q. Would a man do that, you think? A. I don't know what a man would do.

Q. You say that the first question was, "What is your name"? A. Yes.

Q. You asked him that question as your first question, "What is your name"? A. Yes.

Q. And he told you his name? A. He did.

Q. Then he did just the same as he did here this morning; did you see him testify here this morning? A. I don't think I was down here then.

Q. You were in court this morning? A. I was.

Q. Did you see Sternberg take the stand? A. I don't recall that I did, I could not be positive, I have seen quite a number on the stand.

Q. You did not hear him answer questions or the question: "What is your name and give your address"? A. I do know. Through the interpreter, I recall that he was here.

Q. That he gave his name? A. Yes.

Q. What is your third question that you say was asked when you called the interpreter in? A. The place and date of birth, calling for the year and month.

Q. Well, is that it? A. Yes (looking at paper).

Q. Your first question is: "Name in full, home address"? A. Yes, sir.

Q. You probably said when you came to the second one, "Where do you live?" A. Yes.

Q. When you came to the third question, "Date of birth," you had difficulty with that one and you

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called in the Deputy Warden Bramer? A. Not right away I told you.

Q. You could not make him understand the third question? A. That is I said was it in the summer or winter or spring, and evidently he didn't understand it.

Q. Then you called the interpreter? A. Yes, sir. sir.

Q. And then the other questions were indicated to this witness by the interpreter, Deputy Warden Bramer? A. Afterwards?

Q. From the third on? A. Practically. Well, I guess I did put one or two of them or some of them.

Q. Then, at the end, you asked him to sign and Bramer made the remark and said also: "You sign there, do you understand"? A. He didn't have to do that, it was not necessary, but he was putting the questions to him and naturally I suppose he spoke to him, too.

Q. Didn't Bramer pick up the pen and hand it to him and point with the pen where he was to sign after he—after you had indicated, did not Bramer do the translating? A. Bramer did not translate every one of them; as I said before, I put some of them to him, I took charge of the order and the asking the questions myself, and those that he did not seem to understand, why, Bramer put the questions to him. The questions showed the order in which they are asked. There were a number of questions after that that he understood and answered me all right, but when I got down to the question of exemption, what ground he had, if any, and so forth, I had to call in Mr. Bramer again.

Q. In other words, this man did not really understand anything you said in English except when you asked his name he said Louis Sternberg, and then "where do you live" and so and so Rutgers Street and then when you come to the next subject

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of examination he really could not understand you and you could not make him understand actually?
A. No.

JOHN J. ROMANO, called as a witness on behalf of the Government in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Mr. Romano, you are secretary to United States Commissioner Hitchcock? A. Yes, sir.

Q. On the 2nd day of June, 1917, were you present at the hearing, in the matter of Louis Kramer and others, including Louis Sternberg?
A. I was.

Q. Were you standing close to the witness at the time? A. Yes, sir, close to the witness, alongside of the Commissioner.

Q. Alongside of the Commissioner? A. I was on the left of the Commissioner, as though he stood here (indicating) and I was here (indicating).

Q. And the witness sat in a chair right in front of him? A. Yes, sir.

Q. His head turned this way? A. That is right.

Q. And you were right in back of the Commissioner who was holding court then? A. That is correct.

Q. Did you hear Louis Sternberg being called as a witness? A. I did.

Q. Do you recall whether he was sworn? A. I do recall.

Q. And was the defendant sworn, that is, sworn by Commissioner Hitchcock in the English language? A. The English language.

Q. Do you recall his being examined by Mr. Weinberger, his counsel? A. Yes, I do.

Q. Now, will you tell us just what language was used by Mr. Weinberger, and the replies of the wit-

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ness? A. At the beginning of the examination Mr. Weinberger asked him in English a few questions and then an interpreter was called, if I recall correctly, a man from Mr. Weinberger's office.

Q. What was that? Somebody that was with him? A. Somebody who was sitting with him whom I understood to be from Mr. Weinberger's office.

Q. Somebody who was sitting with him in court? A. Yes, and thereafter the examination was carried on with the interpreter, partly through the interpreter and partly he understood himself.

Q. Well, now, the first two questions on direct examination asked Mr. Weinberger were conducted in what language? A. In the English language.

Q. Are you clear as to that? A. I am positive as to that.

Cross-examination by Mr. Weinberger.

Q. Where were you sitting? A. I was standing alongside of the Commissioner.

Q. On what side, his right or left? A. I was standing to his left.

Q. Didn't you see Harry Goidel, an attorney, used as an interpreter and being sworn as an interpreter?

Mr. Content: He was not sworn as an interpreter, you objected.

Mr. Weinberger: I said he was an attorney and he did not have to be sworn.

A. Yes, the question came up at the time that he was an attorney and I understood he was from your office.

Q. He was just there—isn't it a fact that he interpreted right through all these questions? A. No, sir.

Q. How many cases have you had since that before the Commissioner? A. You mean actual hearings or just arraignments?

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Q. Actual hearings and arraignments? A. Oh, I should judge about fifteen, ten or fifteen.

Q. And you remember all about these different things in regard to every case during the last couple of weeks? A. I recall some of them.

Q. And you have been pretty busy during this time, haven't you? A. Not as busy as we could have been.

Q. You have been quite, though, more so than during part of the year, you have been pretty busy the last two weeks, I say? A. Pretty busy.

Q. With people in there on arraignments and also on the question of bail? A. On the different questions that come up before the Commissioner.

Q. And in that particular time there was no more reason why you should notice the particular fine points of this case any more than any other case or cases that happened to be before you? A. Why, I think there was a particular interest to me in this, because it was the first case of this character that came into our office.

Q. Was not the Phillips case before ours? A. It was—I don't think it was as conspicuous as this.

Q. Was it there and wasn't it brought before ours? A. Yes, it was.

Q. And there was just as much excitement about bailing and all the rest of it, there? A. I don't think there was.

Q. With two attorneys representing the defendants and the mother of the defendant being there? A. That is right.

Q. And this case just followed in its natural sequence? A. That is right.

Q. And we put witnesses on to try to get the Commissioner to turn Sternberg and Walker out, as they had nothing to do with it and knew nothing about Becker or Kramer? A. Yes, I recall that.

Q. All I want you to do is this: I want you to clearly search your mind—and let me say to you in asking this question, it is not insulting to you,

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but I ask you this question and I do so, wanting you to search your memory to make sure that you remember clearly what you are saying, and I want you to search your memory and tell me honestly, that is all I am asking the question for, to find out if you can clearly remember these things, and remember them so clearly and to be so sure about every bit of it, that is why I am asking you the question. What I want you to do is to search your memory as closely as you possibly can, and tell me whether it is in your mind so clearly that the answers, the answers to these first two questions were in English? A. Why, it certainly is in my mind very clearly, very clearly, and clearly enough so that I am positive of the fact.

VALENTINE O'TOOLE, a witness called on behalf of the Government, in rebuttal, begin first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Mr. O'Toole, you are a police officer of the City of New York? A. Yes, sir.

Q. In the detective service? A. Yes, sir.

Q. What is your shield number? A. 505, Fourth Branch Detective Bureau.

Q. On the evening of the 31st day of May, 1917, did you take, among other things, the pedigree of the defendant Louis Sternberg at the Magistrate's Court? A. I did.

Q. What language did you take it in? A. English.

Q. What questions did you ask him? A. I asked him his name.

Q. What did he reply? A. Louis Sternberg.

Q. What else? A. I asked him his address and he told me 94 Rutgers Street. I asked him what he worked at and he told me he was a hatter. I

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asked him how old he was and he was 22. I asked him where he was born and he said in Russia. At that time defendant Kramer entered into the case, and he came over and told me, he says, he says something in Jewish to Sternberg and then he told me he cannot talk English and he started to tell me his name was Sternberg.

Q. You had already asked him this question?

A. Yes, and Detective Finan was taking it down as I was asking.

Q. Now, you know the defendant Becker? A. Yes, sir.

Q. And was he there at the time? A. No, sir.

Q. He had not been there, he had not been brought in up until that time? A. No, sir.

Q. You hadn't seen anything of him or heard anything of him up until that time? A. No, sir.

Q. And these questions that you asked Sternberg before Kramer butted in were all in the English language? A. There were—they were.

Q. And they were answered in English? A. Yes, sir.

Cross-examination by Mr. Weinberger.

Q. Where did you take his pedigree, Officer? A. He was in the pen.

Q. Where? A. In the Magistrate's Court, 57th Street.

Q. You say the defendant Becker was not there? A. Not at that time.

Q. When did he get there? A. After.

Q. Were there any pedigrees taken at that time? A. Afterwards?

Q. After Becker got there? A. Detective Finan then took the pedigrees.

Q. He took pedigrees while Becker was there? A. No.

Q. Were not any pedigrees taken when Becker was there? A. Not that I have heard.

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Q. Not that you heard? A. No.

Q. You didn't hear Becker at any time translate for Sternberg? A. No, I took Sternberg's pedigree.

Q. You are the only man that took his pedigree? A. Yes, sir.

Q. And at that time you claim that Kramer did not interpret after the first few questions? A. No; Kramer butted in and I told him to mind his business; I told him to stay away from giving the rest of them a schooling. I said, "You are in bad enough, do not be trying to get this man in worse." He answered them in English to me.

Redirect examination by Mr. Content.

Q. You had nothing to do with the arrest? A. No, sir.

Q. You just took the pedigree? A. That is all.

By the Court.

Q. As I understand it, you were on duty that night and took pedigrees? A. Yes, and I assisted him to the court.

SAMUEL M. HITCHCOCK, a witness called in behalf of the Government in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are the United States Commissioner for the Southern District of New York? A. Yes.

Q. Do you recall the hearing held before yourself as such Commissioner on the 2nd day of June in the matter of Louis Kramer and three others? A. Very well.

Q. Defendants, all stand up. (The defendants all stand up.) Do you recall these all being before you? A. I do.

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Q. Do you recall the examination of the defendants? A. I do.

Q. Do you recall Sternberg—Sternberg, stand up. (The defendant Sternberg stands up.) Do you recall him? A. I do.

Q. And his examination? A. I do.

Q. Did you swear that defendant? A. I did.

Q. In what language did you swear him? A. In English.

Q. Did he raise his right hand? A. He did.

Q. Do you recall Mr. Weinberger's direct examination of Sternberg? A. I do.

Q. Now, will you tell us what language was employed therein? A. At first it was in English.

Q. And after that? A. After that, after replying to several questions in English, Sternberg seemed to hesitate, and I asked him if he could understand the English language to speak it and he said not very well; and then it was suggested by, I think not by Mr. Weinberger but by his associate, that there should be an interpreter and an interpreter was agreed to by yourself, sworn and from there on the interpreter was used.

Q. Do you recall that the first two questions on direct examination were asked by Mr. Weinberger in English? A. In English, yes, certainly.

Q. And that Sternberg gave his answer in the English language? A. Yes, sir.

Q. You do not understand Yiddish yourself? A. I do not.

Cross-examination by Mr. Weinberger.

Q. And when Sternberg took the stand you—let me ask first, Mr. Commissioner, you have been a pretty busy man these days? A. Yes, quite busy.

Q. In all these cases? A. Not unusually so.

Q. But with all the bonds and bails and all that? A. Not unusually so.

Q. But quite busy? A. As a matter of usual thing, yes, sir.

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Q. Not unusually so? A. Not unusually so.

Q. But you have been quite busy just the same?

A. Yes.

Q. There was not anything about Sternberg testifying at that time to particularly impress it on your mind? A. Why, I have a very good memory. The testimony of each of the witnesses before me was impressed upon my mind.

Q. I mean the method of their testifying or anything that happened in the small particulars? A. Why, I think I have a general—very full, general recollection of it all.

Q. This case was not more particular to you than any other case? A. It was an unusual case.

Q. At the time after the Government had rested and I made various motions on behalf of the defendants Sternberg and Walker, stating that as they had nothing to do that evening with the giving out of the pamphlets in Madison Square Garden, and at the end of the argument I said that I would only go into the case for the purpose of trying to get Sternberg and Walker out on——

Mr. Content: How is this material?

Mr. Weinberger: This is quite material, if you will let me go on and finish my question.

Mr. Content: All right.

Q. (Continuing): I was going only to go into the case before you, merely trying to get these two out and stand on the Kramer and Becker alone; I said I would call Sternberg, and then there was a mix-up around the desk in that room, the room being crowded right near your desk, and you asked Sternberg to testify in—did you say anything to him in Yiddish about putting his hand up? A. I don't recall when I asked him to be sworn, someone may have said in Yiddish or any other language to raise his hand.

Q. You didn't hear? A. He responded.

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Q. He responded, and you don't know whether in response to your request or that of someone who may have said something to him in Yiddish? A. It was very prompt after my request.

Q. There was a lot of soldiers around the back of you, and near the window, and near the door, and the room was crowded, wasn't it? A. No, the room was crowded, but not with soldiers.

Q. I say, there were soldiers and sailors, were there not, over near the window? A. Yes.

Q. To your right, and then around to your left, where the witness stand was, was crowded with ordinary people? A. Yes.

Q. The whole room was crowded? A. The room was very full.

Q. And Sternberg sat on the left of your desk and right alongside of him was Mr. Goidel, an attorney, and then I came, on the long table, away from your desk? A. Yes.

Q. And we were all crowded right up close? A. Yes.

Q. And when some questions were asked, didn't you hear something said to Sternberg as soon as your question was asked, even at the beginning, in Yiddish? A. I did not.

Q. Or wasn't it then that I said we had better have an interpreter, Mr. Goidel, who is an attorney, can interpret? A. I think I recall the question that he wanted to get the full meaning of, and I think I myself asked him if he could speak English well, and he said not very well.

Q. We put Becker, Kramer and Walker on the stand before, before we put Sternberg, didn't we? A. I think so; I think that is the order in which they came.

Q. After Sternberg was called as a witness, and sworn, I presume the question was, "What is your name," but they haven't got that here, they merely say, "Louis Sternberg, called as a witness in his own behalf, being first duly sworn, testified as fol-

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lows:" The first question naturally was, Mr. Commissioner, what was your name? A. I asked him that, it was taken down.

Q. And he answered that? A. It was not a part of the examination taken down and made a minute of.

Q. It was your first question? A. That furnishes the basis for the heading of his testimony.

Q. And he answered your question, "Louis Sternberg." A. "Louis Sternberg."

Q. And your next question was, "Where do you live?"

Mr. Content: That was your question.

A. Oh, yes, I thought you said "my question."

Q. I mean, in other words, the first two questions he may have answered in English, that is what I am thinking of now, in other words, you asked him first, what was your name, and started his examination by saying, "Where do you live? A. No. 49 Rutgers Street." And then I asked the question, "Did you go to Madison Square Garden on the 31st day of May?" And I then asked that we have Mr. Goidel as an interpreter. A. I think not.

Q. If your recollection is clear on that— A. I think not. Do you wish to know my recollection?

Q. No, that is your answer, you think not.

By the Court.

Q. What is your recollection? A. My recollection is that the interpreter was not called in until after that question, or rather answer, "No, I don't belong"—

The Court: The Commissioner's voice is not very strong, but the Commissioner testifies that his recollection is that the following questions were asked and answered in English:

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"Q. Where do you live? A. No. 49 Rutgers Street.

"Q. Did you go to Madison Square Garden on the 31st of May? A. Yes.

"Q. Are you an anarchist? A. No.

"Q. Do you believe, or rather do you belong to any No-Conscription movement? A. No, I do not belong.

"Q. Did you give out any of these leaflets of the kind shown here by Government's Exhibit 1, or Government's Exhibit 2?"

As I understand the Commissioner, it was at that exact point that the interpreter was called in.

The Witness: Yes.

JAMES J. FINAN recalled on behalf of the Government in rebuttal.

Direct examination by Mr. Content.

Q. Mr. Finan, did you ever hear the defendant Sternberg when he talked English? A. Yes, I heard him on two occasions.

Q. When was the first occasion? A. The first occasion was in Madison Square Garden and the second occasion was in the Night Court, the police court.

Q. Were you present with the officers at the time the pedigree was taken? A. I was.

Q. You heard his testimony? A. I did.

Q. Is that correct, does that accord with your recollection, what the officer said? A. It does, sir.

Q. Was there any Yiddish used at that time? A. No, the officer and myself do not speak Yiddish.

Q. Was the defendant Becker there when Sternberg's pedigree was taken? A. No, Becker had not been brought in at that time.

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Q. Had not been brought in yet? A. No.

Q. Did you hear Sternberg talk English on another occasion? A. I did, I heard him talk English when he was talking to his counsel there, Mr. Weinberger, speaking good English then.

Q. Where was that and when? A. That was in the Commissioner's hearing, here in this building.

Q. Right down on the third floor? A. Yes.

Mr. Weinberger: No questions.

By the Court.

Q. While you are on the stand, I want to ask you one question: At the time that you took this package, Government's Exhibit 3, from Kramer, was the No-Conscription circular, Exhibit 2 in evidence, one in that package? A. Why, yes, sir, it was, your Honor, that one and No. 1, and there was some others there.

Q. Yes, I understand that. Was the package in exactly the shape it is now, together with the two exhibits in evidence? A. No, it was opened flat, except that he had them sort of, not exactly folded, they were not rolled the way they are now, they were sort of crumbled together in his hand after he refused to give them to me.

Q. My question is, directing your attention rather to the very paper that you took from him, that at that time they were put together and marked with his name on it? A. In his presence then, before I moved the stuff away from there, there is my writing (indicating).

Q. There is no doubt in your recollection, as I understand you, that these various leaflets, exactly like No 2 in evidence, were in this group of papers that you took from him? A. There is no doubt of that, your Honor, because it was all rolled up and put together and marked in his presence.

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Cross-examination by Mr. Weinberger.

Q. Officer, have you ever attended any radical meetings? A. I have never attended a radical meeting at 4th Street and Second Avenue; I have never attended a radical meeting at 127th Street, Sulzer's, you know, where the defendant Kramer charged me, and the record of the Police Department will show I have never attended any meetings there, it would show where I was at those times.

Q. You said 4th Street? A. I said 4th or 127th Street.

Q. 127th Street and Harlem River Casino? A. I did not, never.

Q. Did you ever attend any meetings on this subject? A. Never, to the best of my recollection. I hung out a good deal at 125th Street and Madison Avenue, but I never attended a meeting there, never did.

Q. Have you ever attended any meeting up at Carnegie Hall? A. Never.

Q. Or Cooper Union? A. Never.

Q. Nor any at all? A. Never attended any meeting, of any No-Conscription meeting, of any kind.

Q. Or a business meeting? A. Not even an anarchist meeting, up to the one at Madison Square Garden.

JAMES INNELLA, a witness called on behalf of the Government in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Mr. Innella, you are a Deputy United States Marshal for the Southern District of New York? A. Yes, sir.

Q. A few days ago did you bring the defendant Walker to my room? A. Yes, sir, last Thursday.

Q. Last Thursday? A. Yes.

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Q. Will you state briefly what the conversation was between Walker and myself? A. Yes, sir. Mr. Walker sent you a letter that he would like to be brought down and have a talk with you, and you sent for him through the letter, and he came down there; he said he knew he was getting framed up—

(Continuing) A. Walker said he knew he was getting framed up. And he says he will come down to-morrow, "You send for me to-morrow and have the officer there who arrested me." He said he would like to come down the following day, Thursday, at 2.30 P. M.

Q. Was he brought down the following day? A. Yes, I went up, I was sent up by you to get him.

Q. Then on Thursday, was he nervous that day? A. Yes, he said he was nervous, and would like to be brought down to-morrow, and he would get together.

Q. He was not asked many questions, was he? A. No.

Q. After that day, on Friday, was he brought again into my office, and did you go up and bring him down? A. I brought him down again.

Q. Were all the officers here at that time? A. All the officers were here at that time.

Q. Did he have an opportunity to question the officers, that is, Officer Henry of the 69th, I mean? A. Yes, sir.

Q. Will you tell what he asked Henry? A. He asked Henry if he seen him give out pamphlets.

Q. What did Henry reply? A. He said, yes, sir, he did see him give them out.

Q. Do you remember whether he asked Henry whether he was there—what did Henry reply to that, in the presence of Walker, as to his giving out papers? A. In the presence of Walker and the other officers that were there, he said, sure, he had seen him giving them out.

Q. Did he have any opportunity he wanted to question any of these men? A. Yes, sir.

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Q. Did Walker say anything to you with reference to where the pamphlets were obtained from that were found on him? A. Yes.

Q. What did he say? A. He said Kramer gave him 75 or 100 to give out, but that the plan did not work out, as he gave out but two or three of them at that time that he was arrested by Officer Henry, that is all he said.

Q. Were any threats or inducements of any sort given? A. No, sir.

Q. To make Walker to swear falsely or anything of that sort? A. No, sir.

Q. Any promise made to him concerning his testimony? A. No, sir.

Q. Anyone raise their voice to him or browbeat him, or intimidate him in any way? A. No, sir.

Q. It was made clear to him that he was brought there in accordance and because of the letter he had written to me? A. Because you received a letter from him.

Q. And also Commissioner Hitchcock? A. Yes.

Cross-examination by Mr. Weinberger.

Q. You say the first time he was brought there he said he was nervous? A. Yes.

Q. It is a fact, isn't it, that he has been nervous ever since you have had him in your custody, scared to death? A. No, sir, I did not scare him in any way during that time, treated him as a gentleman.

Q. I didn't say you scared him, I say isn't it a fact that he has been nervous and scared? He says he has neurasthenia. A. He was nervous; and I noticed him, that he does act nervous, and I noticed him in regard to that all along.

Q. He says he is suffering from a nervous ailment, called, as he says, neurasthenia, which is a most common complaint? A. It didn't strike me that he suffered very much from it.

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Q. My question is not that you made him nervous or scared him, my question is was not he as a matter of actual fact, nervous and scared? A. Last Thursday he was just a little nervous, that is all.

By the Court.

Q. That was the day that no questions were asked? A. Yes, sir.

By Mr. Content.

Q. That is the first day he came down? A. Thursday at two thirty.

By Mr. Weinberger.

Q. He was so nervous on the first day that he was brought to the District Attorney's office, after he had written the letter to you, or rather to the District Attorney, about being framed up, that you had to take him back because he could not tell his story? A. No, sir.

Q. What then, what did you take him back for? A. He said in the District Attorney's office that he was very nervous that day, and that he would like to be brought down the next day, the following day, and I took him right back. He said he wanted to go right back. I brought him back immediately, at his request.

Q. Didn't you see he was actually nervous? A. There was a little symboling there, as I took him from the Tombs; he admitted to me that he was not feeling very well, and he very often rubbed his face with his hand, as he was coming down.

Q. And pulling his handkerchief out? A. He got his handkerchief out, yes.

Q. He was not able to tell you anything about his story at all? A. I don't know what kind of a story he had to tell, or anything, I am only telling what I did.

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Q. The reason you took him back on that day was because he was nervous? A. He admitted himself that he was nervous and he wanted to go right back to the Tombs, and didn't want to talk.

Q. When did you first see Walker? A. I seen him the first day he was brought in here, took him in the Tombs on Thursday.

Q. Was he nervous on that day? A. No, sir.

Q. Noticed anything nervous about him? A. No, sir.

Q. Did you pay any particular attention to him? A. No, sir.

Mr. Content: The Government rests.

HARRY WEINBERGER, a witness called on behalf of the defendants, in rebuttal, being first duly affirmed, testified as follows:

Direct examination by Mr. Weinberger.

Q. Is Louis Sternberg one of your clients you are defending here to-day? A. He is.

Q. At any time since you have represented him, has he spoken to you in the English language? A. He has not.

Q. Have you attempted to talk to him in the English language? A. I have.

Q. Could he understand? A. He could not, and I had to try and talk to him in the Jewish language, and then had Mr. Becker or Mr. Kramer translate for him, being fairly poor myself in making myself understood in the Jewish language.

Mr. Content: No questions.

Mr. Weinberger: The defendants rest.

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HAROLD A. CONTENT, recalled on behalf of the Government, in sur-rebuttal, testified as follows:

Direct examination by Mr. Hartridge.

Q. Mr. Content, were you present at the hearing on June 2nd, before Commissioner Hitchcock? A. I was.

Q. Now, did you hear the examination of the defendant Louis Sternberg? A. I did, and I remember it very clearly.

Q. In what language was it? A. The first five or six questions were in the English language, and I can indicate from the record, a copy of which is in my possession, just where, and the exact spot the interpreter was first called in. The question was, "Where do you live?"—was asked him in English by Mr. Weinberger, and I was standing in front of the witness, and he answered in English, "49 Rutgers Street." And the question, "Did you go to Madison Square Garden on the 31st of May?" And it was answered, "Yes," in the English language. The question was, "Are you an anarchist?" And the answer, "No," all being in English. The question was, "Do you believe in or rather do you belong to any No-Conscription movement?" And he answered this question and I remember the language in it. He said, "No, I don't belong," and I can hear him say it now. The question was, "Did you give out any of those leaflets of the kind shown here by Government's Exhibit 1 and Government's Exhibit 2?" And was answered in English, and I held up the leaflets for him when Mr. Weinberger asked that question, whether he had them before him, and the question was, "Where did you get them?" And he answered in the English language, and then there was another question and then this question was asked, "Did you go over to meet Mr. Becker or Mr. Kramer?" And he said, "I don't know who they are, I don't

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know them." And then this question was asked, "Did you tell anybody not to register?" And he didn't get what register meant, and then is the time when it was stated by Mr. Weinberger that we ought to have the services of the interpreter, and he suggested this man, and I asked him to be sworn, and he said he didn't want to be sworn, and the Commissioner said as long as he is an attorney he need not be, and I said all right, what do I care. From there on the English question that was asked, the question by Mr. Weinberger, was asked through the interpreter. When it came to cross-examination by me, I asked him, "How old are you?" and I asked that question in Yiddish, and he answered it in English, "Twenty-four," and after that the examination was in Yiddish. That is the way as I remember it very distinctly, that Mr. Goidel, the attorney, came in to act as interpreter and talked from then on in Yiddish, the questions to the witness, and the answers of the witness were repeated by him in the English language, but I remember that attorney Goidel did not appear in the first part of the questions and answers. They were in English by the witness.

Cross-examination by Mr. Weinberger.

Q. Didn't you hear the Commissioner testify that the question, "Did you give out any of these leaflets?" That that question given here in these minutes. "Did you give out any of these leaflets of the kind shown here by Government's Exhibit 1 and Government's Exhibit 2," as the place where the interpreter came in? A. I remember very clearly that was asked in English and I remember that I held up Government's Exhibit 1 and Government's Exhibit 2, and I repeated the question so there would not be any mistake.

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Mr. Weinberger: May I straighten this question out by referring back to the Commissioner's testimony?

The Court: The Commissioner did testify as you say.

Q. Up to that particular question, in other words, you disagree with him? A. I am giving my recollection.

Q. He didn't go down the page as far as you did—

The Court: That speaks for itself, and the fact is that the recollection of these gentlemen is different on this question as to the questions and answers that were asked and answered in English, and their recollection differs as to just at what point it was that the interpreter was called in.

Mr. Content: The Government rests.

MORRIS BECKER, recalled on behalf of the defendants, testified as follows:

Direct examination by Mr. Weinberger.

Q. Mr. Becker, where did you first see defendant Sternberg? A. 57th Street.

Q. In the court—in the jail of the court? A. In the place where there is a front like—I don't know what you call it—where there is a little place with a man sitting at the desk and asking questions.

Q. Who was there at the time you got there? A. I find other prisoners.

Q. Which ones? A. Kramer and Walker and Sternberg and the girl.

Q. And had they taken any of the pedigrees before you got there? A. I don't know what they did before, but I know when I came in they were asking questions, and they asked every one of them

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to answer, and I was surprised that none of them—

Q. Don't tell us you were surprised, that is a conclusion of yours. A. None of them wanted to answer, really answer for him, and I was the one that answered them; I told them then I didn't understand the reason why they didn't call in an interpreter, a Jewish interpreter to ask the questions and get his answers.

Q. You answered and he took the statements down? A. When they asked him.

Mr. Weinberger: Is that man here?

Mr. Content: O'Toole, stand up. (Man stands up.)

Q. Is that the man that took that down? A. I cannot tell.

Q. You don't remember him, but you answered the question, that is, you put it in Yiddish to him and then interpreted his answer? A. Yes, sir.

Q. And they took the pedigree of the others at the same time? A. Well, they asked them some questions—I don't know whether it is all the questions or not—I know there were a number of questions asked.

Q. While you were there? A. Yes, sir.

Q. And you did interpret, and then your pedigree was taken? A. Yes, sir.

LOUIS KRAMER, recalled on behalf of the defendants, testified as follows:

Direct examination by Mr. Weinberger.

Q. Mr. Kramer, were you taken to the 57th Street police court at the same time that Sternberg and Walker were? A. I was.

Q. And did you hear the pedigree of Sternberg taken? A. I did.

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Q. Did he answer in English to questions in English? A. He did not; he had to have the questions and answers interpreted.

Q. Who interpreted the questions and answers for him there? A. Why, partly from the man Becker and partly from myself.

Cross-examination by Mr. Content.

Q. Mr. Kramer, were you ever convicted of a crime?

Mr. Weinberger: Wait a moment. I object to it on the ground it is not proper rebuttal of any questions asked.

Mr. Content: It is always a test of a witness' credibility, and I submit that question to the Court as a proper question.

The Court: I will allow it.

Mr. Weinberger: I respectfully except.

A. Why, it is according to what Mr. Content calls a crime. I was fined once ten dollars for giving out birth control information.

TESTIMONY CLOSED.

Mr. Weinberger: I ask first, for the purpose of arranging my motions, and for the purpose of summing up, that I be given an adjournment, and the reason for that is this: I am absolutely, physically, tired.

You will remember the first day, when this case began, I had just a few days to prepare my law on the question of the unconstitutionality of this Conscription Law, and I have been working right along in the libraries, on Saturday and on Sunday, and last night I went out of here after 6 o'clock and I had to go back to my office and finish a brief that had to be given to the printer this morning, and was in my office until almost 9 o'clock; and I have

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not had a chance to prepare requests to charge at the end of the summing up, nor have I prepared motions in reference to the various defendants; and I respectfully ask, in view of my physical inability and tiredness, at this time, not to sum up; and that the defendants be given an adjournment until tomorrow morning, and that I be allowed to prepare my law, and allowed to prepare for summing up. I do not believe it is fair to the defendants to ask me to sum up before then, bearing in mind my present tired condition, as I do not believe that I can properly present their case to this jury.

In view of that physical inability, I ask the Court that we adjourn, and the hour being half-past three, almost near the usual adjournment of Court——

Mr. Content: Not of this court.

The Court: The Court desires to state that there is no usual hour of adjournment of this court, and the hour of adjournment is at the suggestion and discretion of the Court. The statute requires that cases involving the so-called Registration Law, which will include any case in my judgment involving an indictment for conspiracy to violate the statute, shall have preference over all other cases. The Court feels that it is the Court's duty to progress with the case. In addition to that, the question of whether or not the case shall continue or not rests in the Court's discretion.

Motion denied, or rather you may proceed with your motion.

Mr. Weinberger: I might say to the Court at the time of the examination of the jury I tried to speed this case up and bunched my questions to not delay the Court; and I appreciate that this is a case that is given preference, but I don't believe that the rights of the defendants should be prejudiced by the exhausted condition of the defendants' counsel, or the excess of speed, because there is no necessity for speed.

The Court: Your motion is denied. Have you any motions?

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Mr. Weinberger: May I respectfully have an exception on the ground of physical inability to proceed and the Court forcing me to finish the case to-night?

The Court: Yes, certainly.

Mr. Weinberger: And I now move on behalf of the four defendants for dismissal of the conspiracy charge and for a direction of verdict on the ground the Government has failed to make out a case.

The Court: The motion to dismiss as to Becker, Kramer and Walker is denied.

In regard to Sternberg, I desire to make it clear that I am not passing on the credibility of witnesses, but that such differences as to the facts in regard to Sternberg's case as have arisen are matters with which I am not now dealing, and if they should in any manner become germane to the other cases, this will be a matter to be argued by counsel and to be dealt with if I deem it proper in the charge of the Court.

From the testimony, however, it appears that Mr. Bevins did not actually see Sternberg distribute the literature, but I understand the Government does not contend that Sternberg distributed any literature. On that branch of the case it would seem to me that Bevins was a very truthful young man and did not state anything more than he actually saw. Now, what he did state was that he saw some leaflets drop down to where he was below, and that when he went up to the balcony there were two persons, and he found some leaflets on one, namely, Sternberg, but that he did not search the other man, and that he did not find out or have any knowledge as to whether there were any leaflets on him.

Non constat these leaflets may have been dropped by the other man.

The further proof shows, uncontradicted, that Sternberg did not know either Becker, Kramer or Walker and had no reason—there is no evidence

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that he had received any of the circulars from these men; and as to him there is no evidence of any agreement or conspiracy; so as to him I am of the opinion that there is no evidence that he is guilty of the crime charged, and I grant the motion, which is a motion for dismissal, made by counsel, for the direction of a verdict, that is, for a directing of the jury to return a verdict of acquittal in favor of defendant Sternberg.

(Defendant Sternberg acquitted by order of the Court.)

Mr. Weinberger: I now ask on behalf of the defendant Walker that he be dismissed, there being no testimony that he urged people not to register, even assuming the People's case to be absolutely so, the only testimony is that he gave out leaflets; and I ask that that not constituting a crime, that he be liberated. I ask in behalf of Walker that the jury be directed to find a verdict of acquittal.

The Court: I deny the motion.

Mr. Weinberger: I respectfully except.

The Court: Now, let the Clerk take the verdict of acquittal in favor of Sternberg.

The Clerk: By direction of the Court, you find a verdict of acquittal, or not guilty, as to Louis Sternberg, and so say you all.

The Court: Sternberg may be discharged. I will allow you a recess of five minutes before you sum up.

Mr. Weinberger: Cannot I have at least half an hour, then, if the Court pleases, before I sum up, and then I will sum up.

The Court: Don't take that long, I will give you until ten minutes of four, and it is now twenty-two minutes of four.

(Recess until 4 o'clock.)

Mr. Content: If your Honor please, I did not offer in evidence as any part of the Government's case, and I do not know if there is any necessity for it, as I could have proven it, and what I would

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have proved was that on the 18th day of May, 1917, the President made his proclamation as to the Conscription Law, and it may be admitted that the proclamation was made.

Mr. Weinberger: I concede that fact.

Mr. Content: It is conceded that on the 18th day of May, that the date of June 5th was duly fixed as the day of registration, from 7 A. M. to 7 P. M.

Mr. Weinberger: I move for a dismissal of the indictment as far as the other three are concerned, and that the jury be directed to acquit on the ground that there is no proof that any of these witnesses approached men between the ages of 21 and 30, inclusive, as alleged in the indictment, and that therefore there was no violation of law.

The Court: Denied.

Mr. Weinberger: I ask that as far as defendant Becker is concerned, there being no proof that he told people not to register, that he be acquitted; that there was no proof of conspiracy, that they conspired together, between the three of them, for the purpose of telling people not to register on June 5th.

The Court: Denied.

Mr. Weinberger: I make a similar motion as far as the defendant Walker is concerned, and the same motion as far as defendant Kramer is concerned.

The Court: Denied as to each.

Mr. Weinberger: An exception.

(Mr. Weinberger summed up to the jury on behalf of the defendants.)

(Mr. Content sums up to the jury on behalf of the Government.)

The Charge of the Court.

MAYER, J.:

Gentlemen of the Jury: I appreciate very much indeed the fact that you have sat here through two long days, but I should very much rather have enabled you to stay a little less each day if that were possible, but this is a very busy court, concerned with matters of more or less importance to the persons who find their way in this court, either on the civil or criminal side, and therefore we are not able, under the necessities of the situation, of expeditiously conducting the business of the court, to do that business in quite as leisurely a fashion as we should like.

I want to express my gratification at the outset, at the very close attention that you gentlemen have paid throughout this entire case, to the testimony and to the arguments of counsel. Both counsel say it is an important case. It is important. It is important to the Government and it is important to the defendants. And it is your purpose, I am sure, as it is mine, that whatever is just and right upon the evidence in the case shall be done.

Now, then, before I instruct you upon the technical points of law concerning which you should be advised, let me preliminarily make a few general observations, so that there may be no confusion in anybody's mind as to the nature of the indictments which have charged the defendants with a certain offense.

This country rests upon law and order. We are a republic. We can exist only so long as we continue to be a free people, obedient to law and order. The laws are made by the people acting through our system of representative government. Every man has a right to his opinion in regard to any law; and every man may, in any proper way, present arguments in favor of the repeal of some law in which he does not believe, but no man has a right to violate any law; and when Congress has

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passed a law and the President has signed the act, that becomes the law of the land, and so remains until, if ever, a proper court declares that it is not a law, because such court declares it is unconstitutional.

These defendants do not stand indicted for the expression of any opinion. They do not stand indicted for entertaining any opinion. It is charged against them that they have conspired to violate one of the laws of the United States, and that in simple language is the subject-matter of the indictment with which you are concerned.

Now I will read only from one clause of the indictment which will typify, generally speaking, the character of this indictment. It is as follows:

"And the Grand Jurors aforesaid"—meaning the Grand Jurors of the United States—"on their oaths aforesaid, do further present that Louis Kramer, Morris Becker, Joseph Walker, and Louis Sternberg, hereinafter referred to as the defendants, all late of the City and County of New York, in the District aforesaid, heretofore, to wit: On the 18th day of May, in the year of our Lord, one thousand nine hundred and seventeen, and on each and every day thereafter up to and including the date of the filing of this indictment, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully, wilfully, knowingly and feloniously, did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the United States; that is to say, the said defendants unlawfully, wilfully, knowingly and feloniously did conspire together and agree among themselves and with said divers persons whose names are to the Grand Jurors unknown, to aid, abet, counsel, command, induce and procure divers persons whose names are to the Grand Jurors unknown, the same being male persons between the ages of 21 and 30, both inclusive, being

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subject to registration in accordance with regulations to be prescribed by the President and upon proclamation by the President and other public notice given by him and by his direction, stating the time and place of such registration, being under the duty as persons of the designated ages other than officers and enlisted men of the regular army, the navy and the national guard and naval militia, while in the service of the United States, to present themselves for and submit to registration under the provisions of the Act of Congress approved May 18th, 1917."

Now, when the indictment says that on or about the 18th day of May, and each and every day thereafter, that is merely a legal form of saying that at some time on or subsequent to the 18th of May, they entered into the conspiracy with which they are charged.

Now let us see what these laws are. Section 37 of the United States Criminal Code is very simply worded; any business man can understand it:

"If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both."

Now, then, these men are charged with violating that section—with conspiring to commit an offense against the United States.

Now what is the offense which they are charged with conspiring to violate? The answer is, it is an offense to conspire to induce people to violate Section 5 of what is generally known as the "Selective Draft Act."

I will read as much of Section 5 as is necessary to present it to you. On May 18th, 1917, this so-called "Selective Draft Act" became law. It is

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very simple and in Section 5—that is, this section is simple—it provides that:

“All male persons between the ages of 21 and 30, both inclusive, shall be subject to registration in accordance with regulations to be prescribed by the President and upon proclamation by the President or other public notice given by him or by his direction, stating the time and place of such registration and it shall be the duty of all persons of the designated ages excepting officers and enlisted men of the regular army, the navy and the national guard and naval militia while in the service of the United States, to present themselves for and submit to registration under the provisions of this Act.”

And then later this same section says:

“Any person who shall wilfully fail or refuse to present himself for registration, or submit thereto as herein provided, shall be guilty of a misdemeanor and shall, upon conviction, be punished” as the statute provides.

Now, therefore, the sole question with which you are concerned is on the evidence in this case. Has the Government satisfied you beyond a reasonable doubt that these men who remain in the case have conspired to induce people not to register as provided by Section 5 of the Selective Draft Act?

A conspiracy is not necessarily formed by two people coming together and in so many words agreeing unlawfully to do something. I shall read you and I shall also ask your close attention to what there is to be said to you by way of instruction on the question of conspiracy. One of the Justices of the Supreme Court has said:

“A conspiracy is a partnership in criminal purposes.” Now I conceive, and I suppose that that in a sentence sums up really what is meant by a conspiracy, and yet I deem it my duty to give you a more elaborate definition: The word “conspiracy”

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means a confederation or agreement to effect an unlawful object even by lawful means; or a lawful object if by unlawful means. The essence of conspiracy is agreement or confederation.

To constitute a conspiracy it is not necessary that the two or more persons should meet together and enter into an explicit or formal agreement; it is not necessary that they should by their words or in writing state what the unlawful plan or the unlawful means are to be, nor need there be set forth at length the details thereof, nor the methods by which the unlawful combination is to be made effective; it is sufficient if two or more persons in any manner or through any contrivance, even tacitly, come to an actual understanding, to accomplish a common, unlawful end or design. When the unlawful end is sought to be effected, and two or more persons, actuated by a common purpose to accomplish that act, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy although the part that some one of them was to take was a subordinate part or even was to be executed at a great distance from the other conspirator or conspirators.

So that two men might have a perfect understanding in New York and a third man might be in San Francisco, and if he came within the definition that I have just read, he, in San Francisco, might do his part in carrying out the conspiracy that was formed between all these parties.

A conspiracy is formed, and the foundation of crime is laid when tacitly or expressly the agreement is entered into to accomplish the result which the law forbids. For conviction, however, the statute requires not only that the mutual agreement shall have been made, not only that conspiracy shall have been intellectually formed, but that at least one of the parties to such unlawful agreement shall

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actually do and shall really perform some act to effect the object of the conspiracy.

Therefore, to warrant a conviction in conspiracy, it must be found, first, that there was an agreement, that is, a conspiracy; second, that at least one of the conspirators performed some act to effectuate the object that they had in view; if that most essential feature be present, then all the persons who made the agreement or who entered it knowingly, after it was made, are guilty of conspiracy, no matter whether they all performed acts to effectuate its object or left active labors to others.

Now, in the case at bar, the evidence is that the defendants Becker and Kramer knew each other prior to the night of the Madison Square Garden meeting; that they belong to an organization known as the "No-Conscription League," which had certain papers or leaflets. It further appears that both of these defendants were in Madison Square Garden upon the night in question, and the evidence adduced by the Government is that a series of papers or leaflets was taken from each one of the four men who stand here indicted, some of these papers being that which is known as Government's Exhibit 1, and some of them which are known as Government's Exhibit 2.

Now, as to Walker, he has stated on the stand that he received a series, a number of these papers, from Kramer.

Kramer testifies that although he had Exhibit 1, he did not have Exhibit 2; that he had never seen Exhibit 2 except upon some occasion at some meeting when some man handed it to him and he read it and handed it back.

The witnesses for the Government have sworn, without qualification, that the exhibit in evidence, which has been spoken of as the bundle, was taken from Kramer; that his name was placed on it then and there, to identify it, and that that bundle contained both Exhibit 1 and Exhibit 2.

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It has likewise been sworn to by the witnesses for the Government, that both No. 1 and No. 2 were found in the possession of Becker, and if my memory is right, Becker said he had a number of No. 2 in his pocket.

I might remark, in passing, that if my recollection of the facts differs from yours, your recollection is to control on the facts in question. But as to the law, you must be guided by what I say, because under our system the jury takes the law from the Court, while on the other hand the jury is the sole judge of the facts.

It is further testified that these leaflets, both 1 and 2, were given out by these defendants to various persons; and it is further testified that Kramer advised—I am not using the language—persons not to register, and in effect said that if persons liable to registration did not register in sufficient number, then in effect it would not be possible for the Government to carry out its plans. I am not concerning myself with the exact language, that you will remember.

Now, if you believe from the evidence in this case, that it was understood between these men, that they were to go that night to the Garden, and that persons were to be induced not to register, then what Kramer said binds all the defendants—that is, what Kramer said in respect to registration, because if you followed my definition of conspiracy, the moment that you are satisfied that the agreement existed which constituted the conspiracy, then the act of every one of the men is charged against every other man. And the reason that the law is so is, at least in part, because conspiracy is an insidious crime and a very difficult crime, sometimes, to discover; and in the administration of justice it has been found wise, through very many years, that the law should be that once the conspiracy is entered into, what each man does shall bind the others, because a different task in a conspiracy may be as-

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signed to the different men who make up the conspirators.

Now, in regard to the two circulars, if you believe that these people had the agreement of which I have spoken, and if you believe the testimony that they were given out in regard to the two circulars, there is some differentiation:

Exhibit No. 1 is not in itself any violation of law. It may, however, be read in connection with all the facts in the case as an illuminant—if you think it is—of the intent of the defendants.

In regard to Exhibit No. 2, I shall submit that to you for your own construction. All of you are thoroughly familiar with the English language, and presumably are men of education, and you can determine the ordinary meaning of ordinary words. I shall not read it all, although you must determine the meaning, not only by the words themselves, but also by the context. One part of that circular reads as follows: "We will resist Conscription by every means in our power and we will sustain those who for similar reasons refuse to be conscripted."

And then again:

"Resist conscription. Organize meetings. Join our League. Send us money. Help us to give assistance to those who come in conflict with the Government."

The first necessary step in our selective draft for putting it into operation was that by the provision of Congress men between certain ages should register. That was the preliminary to other provisions which will enable the responsible officers of the Government to assign those who are registered to such tasks as the statute provides for, and as the Government officials may deem proper within the authority conferred upon them; and so, as you know, without going into details, when the time comes the appropriate Government officials may determine who shall be utilized for service in the

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army or navy, who shall be utilized for service in agricultural pursuits; and who shall be utilized for service in industrial pursuits; and who for one reason or another, provided for by the statute, shall be exempted from service.

Now, if, after you read these, you believe that that language in view of all the facts and circumstances disclosed by the evidence in the case—such evidence as you believe—amounted to advice not to register, but to fail wilfully to register, then this circular is within the definition of being an act, if distributed in the nature of advice, to disobey Section 5 of the Selective Draft Act. But if you should differ as to the meaning of that circular, and you believe there was an agreement between these men, and you are satisfied with what the Government witnesses have said as to Kramer stating to people not to register, then that is the overt act which is the second step in a conspiracy case: First, the agreement; second, the open act in furtherance of the wrongful agreement.

Now, when we come to determine the credibility of witnesses, you will apply that same good sense that you bring to bear in the daily affairs of your own lives. You are all of you accustomed to meeting men. It is a part of a man's life to attempt, at least, to read character. You know in your daily life the men that impress you as honorable, truthful men. You likewise have your ideas as to men in whose truth or veracity you do not believe.

In the Federal Courts, the Judge is permitted to comment on the facts, although the jury will take its own judgment of the facts, and the jury, as I said before, is the sole judge of the facts.

Now let us see, the witnesses for the Government are the police officer, Finan, and a number of these young men who have entered the military and naval service. You may ask yourselves what purpose or object they would have or had in swearing falsely upon this stand; what personal gain,

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you may ask yourselves, would it be to them to invent in whole or in part any story as to the events of the night in question. You may take into consideration their appearance and the manner in which they impressed you as to whether they were upright men and told the truth; and you are at liberty in that connection to consider whether it is a mark of truth, that when men go on the stand and do not tell every detail which would go to make up a crime, that is some evidence at least as to whether or not they are telling the truth. You heard those men, they were subjected to examination and cross-examination, and it is for you to say in the making up of your judgment whether they were credible witnesses.

Every man is presumed to be innocent until the jury finds him guilty beyond a reasonable doubt; and that presumption attaches to these defendants, and they are entitled to that presumption. And in like manner you may determine from their manner and from what was developed out of their mouths, as to whether, upon the essential and crucial facts in the case, they did or did not tell the truth. You may take into consideration whether their testimony has been consistent, upon this trial, with such testimony as they gave before the Commissioner; and you may test their credibility by those ordinary rules of reason to which I have already referred.

I said that it is the duty of the Government to prove the guilt of any defendant beyond a reasonable doubt. I will read you a very brief definition of what I mean by reasonable doubt. I have often thought it defined itself in the minds of intelligent men, but yet it is my duty to endeavor to make clear what is meant by that expression in criminal cases. In criminal cases it is not sufficient to justify a verdict of guilty, that the weight of evidence may balance the scale against the accused rather than in his favor. The evidence must, however, so

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preponderate as to leave no reasonable doubt of guilt. If the evidence justifies, in your judgment, that the accused or any of them be guilty, so as to exclude any other reasonable conclusion, you should declare them to be guilty. But if, after consideration, you can reconcile the evidence before you with any reasonable hypothesis consistent with innocence, you should do so and find the defendants or any of them not guilty. This old established and indeed ancient rule does not permit to you, however, a mere sentiment or guess or conjecture that the accused, or any of them, are possibly innocent; you cannot base your judgment upon a merciful hope; for a reasonable doubt, as the words imply, is a doubt, such a doubt as would be entertained by a reasonable man after an impartial and thorough review of all the evidence and all the facts in the case brought to his attention. If, after such review and consideration, you can honestly say that you are not satisfied that the defendants are guilty, then you have a reasonable doubt. If, on the other hand, you have a settled opinion, an honest belief that the accused are guilty, and that opinion is of the degree of certainty that you would require in acting upon the most important affairs of your own life, then you have no reasonable doubt.

Now, in a conspiracy case, gentlemen of the jury, you must find that there was an agreement between two persons. If you so find, you are at liberty to convict such of the persons indicted as were parties to that agreement. If you believe, however, that any one of the three here indicted was not a party to the agreement, then that person is entitled to an acquittal.

I think it is only fair for me to explain to you the difference between the case of Sternberg, whom you acquitted by my order, and Walker:

In Sternberg's case there was no evidence whatever, as a matter of law, of his entering into the alleged conspiracy. In Walker's case there was some

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evidence. But in regard to that, if you feel that Walker did not know, when these pamphlets were handed to him, what they were, and had had no part in the arrangement which had to do with advising people not to register, then you will acquit Walker. In other words, if Walker upon that evening was a mere accidental instrument without knowledge, then he is entitled to be acquitted.

I think it is only fair to say that in regard to all three defendants, which includes Walker, you are to give the case of each defendant separately, as well as the case of the three jointly, careful consideration. If you should regard any one of them as innocent, or at least that the Government has not satisfied you beyond a reasonable doubt of his guilt, you are at liberty to acquit that one. If you should think any two of them have so acted, namely, that the Government has satisfied you beyond a reasonable doubt as to their guilt, it is your right and your duty to convict those two and acquit the one in regard to whom you have a reasonable doubt.

There is no obligation upon the part of any defendant to produce witnesses as to his good reputation, and the failure so to do as a matter of law does not affect the right of any defendant. It is fair to say, however, as to Walker, that the testimony is that he has been employed for some thirteen years as a printer, and that the secretary of the union with which he was connected came upon the stand and testified that he had a good reputation for veracity.

Now, gentlemen, I want you to take this case, as I know you will, with the same earnestness with which you have listened to it. I do not for a moment ask any man on this jury to give up any conscientious convictions that he may have in regard to the guilt or lack of guilt of these defendants. I do ask you, however, to make every conscientious and honorable effort to agree upon a verdict. If there should be a difference of opinion among you,

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you are entitled to discuss the matter temperately, deliberately, each of you presenting to the other such views as you may have. If you thus approach the consideration of this case, you will approach it with a mental attitude which will undoubtedly result in a verdict that will be just on the evidence, and with these instructions I commit the case to you.

Mr. Weinberger: May I ask the Court to charge that the fact that two of these defendants are anarchists and opposed to governments and law should not prejudice the jury against them, and that they should not find them guilty of conspiracy because they believe in anarchy and no government.

The Court: I so charge.

Mr. Weinberger: I ask your Honor to charge the jury that there is no evidence that either or any of the defendants approached men between twenty-one and thirty years, inclusive, and asked them to refuse to register.

The Court: I decline to so charge. I leave the evidence in the case to the jury, and I further charge that there is no necessity, in law, of proving the age of any person who was approached by any of these defendants, if the jury believe that such persons were approached.

Mr. Weinberger: I respectfully except. I ask the Court to charge the jury that assuming that two or more of the defendants conspired to induce people not to register, that they must find, in addition, that they committed an overt act to carry that conspiracy out in order to find them guilty.

The Court: I have already charged that very fully.

Mr. Weinberger: That if there was a conspiracy to give out the leaflets only, and if the jury should believe that Kramer went over there and told people not to register, the defendants, including Kramer, are not guilty of conspiracy.

The Court: I decline to so charge.

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Mr. Weinberger: I respectfully except. I ask the Court to charge that inasmuch as in the public mind and in the public press and from the use of English to-day registration and conscription are two separate and distinct things, I ask the Court to charge as a matter of law that People's Exhibit 2, if they believe the defendants to have given them out, is not a violation of law.

The Court: I decline to charge as requested.

Mr. Weinberger: I respectfully except. I ask the Court to charge that the mere fact that the defendant told people to resist the conscription, and assuming that they conspired to give these out, that that is not sufficient to convict, inasmuch as the charge here is that they conspired to tell people not to register.

The Court: I decline to charge as requested, and repeat that the jury follow the instructions heretofore given upon the facts as they may find them.

Mr. Weinberger: I respectfully except. I ask the Court to charge that the defendant is presumed to be innocent until the contrary is established beyond all reasonable doubt.

Mr. Content: Your Honor has already charged that.

The Court: I have already so charged.

Mr. Weinberger: I ask the Court to charge that the presumption of innocence is not a mere phraseology, but that the jury is bound to entertain it conscientiously, sincerely and ungrudgingly, and that on the question of reasonable doubt, that if there is one, they have to give the defendants the full benefit of it.

Mr. Content: Your Honor has already charged on that.

The Court: I have so charged and charge it again.

Mr. Weinberger: I ask your Honor to charge that where a reasonable doubt of the defendants' guilt is entertained by any one juror, that the defendants cannot be found guilty.

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The Court: That is like saying two and two are four.

Mr. Weinberger: I believe that the proposition is that sometimes one juror having an opinion——

The Court: I have already charged reasonable doubt very fully.

Mr. Weinberger: I respectfully except to the Court's denial. I ask the Court to charge that if the conspiracy was formed, and not for the purposes charged in the complaint, in other words, if the defendants conspired to do something else, and any of them did something different, then that the defendants—none of them would be guilty of a conspiracy under the law.

The Court: I fully charged on conspiracy. I have no desire at this time to confuse the issues.

Mr. Weinberger: I respectfully except. I ask your Honor to charge that in weighing the circumstantial evidence from which the jury must take their conclusions as to whether or not there was a conspiracy that first they must believe that the circumstances themselves were fully established; second, that all the circumstances are consistent with the guilt of the defendant; third, that the circumstances should be of a conclusive nature tending to prove the guilt of the defendant; fourth, that it is essential that the circumstances should point, in the minds of the jury, to the guilt of the defendants.

The Court: I have fully charged on the question of reasonable doubt, and I do not propose to confuse that charge.

Mr. Weinberger: I ask the Court to charge that in the case of circumstantial evidence, and this is a case that is——

Mr. Content: This is a case of direct evidence.

Mr. Weinberger: Direct evidence? Perhaps if you believe——

The Court: Do not argue.

Mr. Weinberger: May I make it clear, your Honor, both to Mr. Content and——

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The Court: No, no, you make your requests and I will rule.

Mr. Weinberger: I request your Honor to charge the jury that the mere fact that there is direct evidence of the overt act, that it still leaves the question of conspiracy one of circumstantial evidence, and that the proof ought to be not only circumstantial of the guilt of the prisoners, but inconsistent with any other rational conclusion.

The Court: I fully charged on conspiracy.

Mr. Weinberger: I respectfully except to your Honor's refusal to charge this. I ask your Honor to charge that where a conviction for the crime of conspiracy is sought, as in other criminal cases, the jury must acquit, if upon any reasonable hypothesis they can reconcile the evidence with the defendants' innocence.

The Court: I have already charged that.

Mr. Content: You charged on reasonable doubt.

Mr. Weinberger: I respectfully except. I have just two more. I ask your Honor to charge that the confederating together is so necessary as a constituent element of the crime that it has been held that several persons may simultaneously actually do, without incurring liability, and punishment, that which, if it were the object of a preconcerted design, they could not have done and an attempt to do would render the participants legally guilty of conspiracy.

The Court: I see no occasion to amplify my charge on conspiracy.

Mr. Weinberger: I respectfully except to your Honor's refusal to charge. I ask your Honor to charge—nor will evidence that each of several defendants acted illegally with the same end in view support a charge of conspiracy unless it appears that such acts were done pursuant to a mutual agreement.

The Court: I have charged it and I charge it again.

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Mr. Weinberger: My last request is that several persons may simultaneously actually do, without incurring the law of punishment in reference to conspiracy, that which, if it were the object of a preconcerted design, thought, not done or attempted, would render the participants liable to indictment for conspiracy, nor will evidence that each of several defendants acted illegally or maliciously with the same end in view support the charge of conspiracy, unless it appears that such acts were done pursuant to a mutual agreement.

The Court: So charged. The jury may retire. Gentlemen, if you want to take your lunch before considering the case just let the marshal know.

(A marshal was sworn and the jury retired.)

(The jury retired.)

(The jury returned, and the foreman announced the verdict as follows):

"Walker, Not guilty. Becker and Kramer, Guilty, with recommendation to your Honor's clemency."

The Court: Gentlemen of the Jury, you have, in my opinion, rendered a just verdict, and I believe you will have occasion to look back with satisfaction upon the service you have rendered as jurymen.

Mr. Weinberger: I move to set aside the verdict as contrary to the evidence, contrary to the law; and I move to set aside the verdict, as far as defendants Kramer and Becker are concerned, on behalf of each individually and both together, as contrary to law and contrary to the evidence, and on all the grounds mentioned in the Criminal Code.

The Court: Denied.

Mr. Weinberger: I respectfully except.

The Court: What about sentence?

Mr. Content: I think, if I might suggest to your Honor, that sentence should go over to await the outcome of the case against Kramer alone.

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The Court: What do you desire?

Mr. Weinberger: I think that it would be best to have sentence postponed until to-morrow.

THE SENTENCE OF THE COURT (MAYER, J.).

The Court: Kramer, you have been convicted by a jury on an indictment for conspiring with others to induce persons to violate a statute of the United States, namely, to violate the statute providing for registration of males between certain ages.

Under some circumstances, the Court feels impelled to accept a recommendation for mercy, but whether mercy shall be extended or not is a matter entirely within the discretion of the Court. There is no duty imposed upon a jury in that regard. The duty is the Court's duty, and the Court must perform its duty in accordance with its best judgment.

The offense of which you have been convicted, and the facts developed in the testimony do not call for mercy in your case. The offense is of a character when committed, as it was by you, defiantly and brazenly, which does not call for gentle, merciful treatment—it calls for severe treatment. The sentence which should be imposed upon you, should be the kind of sentence which not merely punishes you, but shall be exemplary, so that all the world may know that the administration of justice by the courts of the United States will not tolerate offenses of that character, and will not tolerate merciful consideration to men who are defiant as you are. The case would be quite different of some young person who had some conscientious scruples, and who in other respects was an obedient American citizen, or an obedient alien to our laws. You say you have a right to obey or disobey as pleases you. You have mistaken the country in which you have been privileged to come. This is a country

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founded on democracy and a republic where free men live, because free men will obey the will of the majority expressed through duly constituted representatives.

On the stand you uttered brave words: You were willing that you should be shot before you obeyed the laws of this country; but I noticed what is quite characteristic of men like you, that you took very good care to deny, by perjured testimony, every piece of testimony that had to do with the essential features that would tend to your conviction; and your brave words became the perjured testimony of a coward, and that is quite characteristic of a man like you. You talk a lot, but when the time to carry out your conviction comes, you are a craven.

Now, we do not propose to tolerate such men as you. You came here, as you say, when you were a year old. You speak and understand English as well as a native born. Such education as you got, you got in this country, afforded to you by a free people, by the contributions of earnest, industrious, law-abiding citizens, who make it possible for you to live here and to be educated.

Now, I know perfectly well that you will be unable to pay a fine. The extreme penalty under the law for the offense for which you stand convicted is two years imprisonment and \$10,000 fine, and I propose to make that your punishment, so that all men shall know that you have been punished with the full and complete punishment provided by the statute.

I sentence you to be imprisoned in the United States Penitentiary at Atlanta for two years and to pay a fine of \$10,000.

Now, Becker, in regard to you I am going to take into consideration the recommendation of the jury to some extent. Your attitude on the stand was, to my mind, quite to be differentiated from that of Kramer. You announced your views, it is true, but at the same time in respect of the essential

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features of the testimony, you adhered much more closely to the truth than did Kramer. You frankly told us that you had some of those so-called exhibits, the Exhibit No. 2, on your person, and while you were subject precisely to the same condemnations that are contained in the words that I addressed to Kramer, I will take into consideration that your attitude in a slight extent differed, and that your testimony in the main was much nearer the truth than Kramer's. At the same time, for the reasons that I have indicated, I regard you, equally, as a public menace, and you will begin to understand, when I impose my sentence, that there are laws in this country, and neither you nor any other man has a right to disobey them.

I sentence you to the United States Penitentiary at Atlanta for one year and eight months.

The foregoing contains all of the testimony given at the trial, and all of the foregoing proceedings were had and exceptions taken and noted by the Court before the jury retired to consider of its verdict, and because the same would otherwise not appear of record the defendants pray the Court to sign this, their bill of exceptions, to have the same force and effect as to each of said exceptions as though the same were set forth in a separate bill of exceptions, which is granted; and, accordingly, the Court signs defendants' bill of exceptions, to have the force and effect aforesaid, now for then, this 10th day of September, 1917.

JULIUS M. MAYER,
Judge.

Notice of settlement waived September 8th, 1917.

FRANCIS G. CAFFEY,
U. S. Attorney, S. D. of New York.

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Government's Exhibit 1.

NO - CONSCRIPTION

MASS MEETING

on the eve of registration

Monday, June 4, 8 P. M.

HUNTS POINT PALACE

953 So. Boulevard

One Block from Simpson St. Subway Station

All Bronx Cars Transfer



**Auspices of No-Conscription League
of New York**

SPEAKERS: Emma Goldman; Alexander Berkman; Louis Baury; "Mother" Yuster; Mrs. Stella Comyn Ballantine; Mrs. Shapiro; Leonard D. Abbott; Kate Siebel; Rose Yuster; Robert H. Hutchinson; Louis C. Fraina; Winter Russel and others, among them young men of conscriptable age.

Doors open 7 P. M.

Admission Free

Box Seats 25c

**Mothers, Fathers, Sons—Turn Out in Protest
Against Conscription!**

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Government's Exhibit 2.**NO CONSCRIPTION!**

Conscription has now become a fact in this country. It took England fully 18 months after she engaged in the war to impose compulsory military service on her people. It was left for "free" America to pass a conscription bill six weeks after she declared war against Germany.



What becomes of the patriotic boast of America to have entered the European war in behalf of the principle of democracy? But that is not all. Every country in Europe has recognized the right of conscientious objectors—of men who refuse to engage in war on the ground that they are opposed to taking life. Yet this democratic country makes no such provision for those who will not commit murder at the behest of the war profiteers. Thus the "land of the free and the home of the brave" is ready to coerce free men into the military yoke.

No one to whom the fundamental principle of liberty and justice is more than an idle phrase, can help realize that the patriotic clap-trap now shouted by press, pulpit and the authorities, betrays a desperate effort of the ruling class in this country to throw sand in the eyes of the masses and to

blind them to the real issue confronting them. That issue is the Prussianizing of America so as to destroy whatever few liberties the people have achieved through an incessant struggle of many years.

Already all labor protective laws have been abrogated, which means that while husbands, fathers and sons are butchered on the battlefield, the women and children will be exploited in our industrial bastiles to the heart's content of the American patriots for gain and power.

Freedom of speech, of press and assembly is about to be thrown upon the dunghheap of political guarantees. But crime of all crimes, the flower of the country is to be forced into murder whether or not they believe in war or in the efficacy of saving democracy in Europe by the destruction of democracy at home.

Liberty of conscience is the most fundamental of all human rights, the pivot of all progress. No man may be deprived of it without losing every vestige of freedom of thought and action. In these days when every principle and conception of democracy and individual liberty is being cast overboard under the pretext of democratizing Germany, it behooves every liberty-loving man and woman to insist on his or her right of individual choice in the ordering of his life and actions.

The No-Conscription League has been formed for the purpose of encouraging conscientious objectors to affirm their liberty of conscience and to make their objection to human slaughter effective by refusing to participate in the killing of their fellow men. The No-Conscription League is to be the voice of protest against the coercion of conscientious objectors to participate in the war. Our platform may be summarized as follows:

We oppose conscription because we are internationalists, anti-militarists, and opposed to all wars waged by capitalistic governments.

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We will fight for what we choose to fight for; we will never fight simply because we are ordered to fight.

We believe that the militarization of America is an evil that far outweighs, in its anti-social and anti-libertarian effects, any good that may come from America's participation in the war.

We will resist conscription by every means in our power, and we will sustain those who, for similar reasons, refuse to be conscripted.

We are not unmindful of the difficulties in our way. But we have resolved to go ahead and spare no effort to make the voice of protest a moral force in the life of this country. The initial efforts of the conscientious objectors in England were fraught with many hardships and danger, but finally the government of Great Britain was forced to give heed to the steadily increasing volume of public protest against the coercion of conscientious objectors. So we, too, in America, will doubtless meet the full severity of the government and the condemnation of the war-mad jingoes, but we are nevertheless determined to go ahead. We feel confident in arousing thousands of people who are conscientious objectors to the murder of their fellowmen and to whom a principle represents the most vital thing in life.

Resist conscription. Organize meetings. Join our League. Send us money. Help us to give assistance to those who come in conflict with the government. Help us to publish literature against militarism and against conscription.

We consider this campaign of the utmost importance at the present time. Amid hateful, cowardly silence, a powerful voice and an all-embracing love are necessary to make the living dead shiver.

NO-CONSCRIPTION LEAGUE,
20 East 125th St., New York.

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Government's Exhibit 3.

Bundle of circulars similar to Government's Exhibits 1 and 2 taken from Louis Kramer.

Government's Exhibit 4.

Bundle of circulars similar to Government's Exhibits 1 and 2 taken from Joseph Walker.

Government's Exhibit 5.

Bundle of circulars similar to Government's Exhibits 1 and 2 taken from Morris Becker.

Government's Exhibit 6.

Bundle of circulars similar to Government's Exhibits 1 and 2 taken from Louis Sternberg.

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Assignments of Error.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

LOUIS KRAMER and MORRIS
BECKER,
Plaintiffs-in-Error,
against

UNITED STATES OF AMERICA,
Defendant-in-Error.

Now comes the above-named Louis Kramer and Morris Becker, plaintiffs-in-error, by their attorney, and make and file the following assignments of error upon which they will rely upon the prosecution of the writ of error to the Supreme Court of the United States sued out by them herein to review the errors committed in the above-entitled cause in the United States District Court for the Southern District of New York and in the proceedings had therein and against them in the said court.

That the District Court erred as follows:

FIRST: In not dismissing the indictment herein, upon the ground that the same did not charge the defendants with any offense against the United States or any law thereof, in that it is not a violation of any law for defendants to have conspired and agreed among themselves and with other persons to aid, abet, counsel, command, induce and procure divers persons subject to registration and submit thereto in accordance with "An act to authorize the President to increase temporarily the military establishment of the United States," approved the 18th day of May, 1917.

SECOND: In not granting the motion to arrest judgment on the ground that the indictment did

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not charge an offense against the United States or any law thereof.

THIRD: In not setting aside the verdict upon the ground that the facts proved did not constitute an offense against the United States or any law thereof.

That the District Court erred in the construction and application of the Constitution of the United States and in the disposition of the merits of the case as follows:

FOURTH: In denying the defendants' motion made at the opening of the trial to dismiss the indictment upon the ground that the same did not charge the defendants with any offense against the United States or any law thereof upon the following grounds:

1. That there can be no conspiracy to violate the law entitled "An act to authorize the President to increase temporarily the military establishment of the United States," approved May 18th, 1917, also known as "The Conscription Law," in that the said Act is unconstitutional upon the following grounds:

- A. It violates Section 13, Subd. 1 of the Amendments to the United States Constitution, which reads as follows:

"Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States or any place subject to their jurisdiction."

The said law imposes military, agricultural or industrial service, under any conditions determined by the military or Congress as to hours, conditions and pay, on all male persons in the United States between the ages of twenty-one and thirty, both inclusive, excepting officers and enlisted men of the regular Army, the Navy, the Marine Corps, and the

KRAMER AND BECKER V. UNITED STATES.

National Guard and Naval Militia, while in the service of the United States, and officers in the Officers' Reserve Corps, and enlisted men in the Enlisted Reserve Corps, while in active service.

B. It violates Article I of the Amendments to the United States Constitution, which reads as follows:

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

That this "Conscription Law" does establish a religion in that it gives a special privilege to members of "any well recognized religious sect or organization at present organized and existing, and whose existing creed or principles forbid its members to participate in war in any form, and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organizations," and it prohibits and invades the free exercise of the religion of any and all individuals not belonging to "any well recognized religious sect or organization at present organized and existing, and whose existing creed or principles forbid its members to participate in war in any form, and whose religious convictions are against war or participation in accordance with the creed or principles of said religious organizations."

C. It violates Article I of the United States Constitution, Section 8, Subd. 15 and 16, which provides:

"That Congress shall have power (Subd. 15) to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions (Subd. 16). To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respec-

KRAMER AND BECKER V. UNITED STATES.

tively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress."

That neither an invasion nor a rebellion is taking place, and further that the law does not call the Militia, but calls upon all male persons with certain exceptions between the ages of twenty-one and thirty years inclusive.

D. It violates Article I, Section 8, Subd. 12, of the Constitution, which reads as follows:

"To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years."

E. It violates Article IV, Section II, Subd. I, of the Constitution, which reads as follows:

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

That the said law imposes military, agricultural or industrial service on all male citizens between the ages of twenty-one and thirty years inclusive, with certain exceptions, thereby excluding the excepted classes and older and younger males.

F. It violates Article V of the Amendments to the Constitution, which reads as follows:

"No person shall * * * be deprived of life, liberty or property without due process of law."

FIFTH: In denying the defendants' motion to dismiss the indictment herein or to instruct the jury to acquit the defendants made at the conclusion of the case as presented by the United States upon the grounds contained in the first assignment of error, and upon the further ground that the indictment does not charge a crime; that upon all the facts proven the defendants are not guilty; that there is no proof that the defendants conspired un-

KRAMER AND BECKER V. UNITED STATES.

lawfully, wilfully, knowingly, feloniously together and with divers persons and did agree among themselves and with the said divers persons to aid, abet, counsel, command, induce and procure divers persons, the same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration in accordance with regulations prescribed by the President to unlawfully and wilfully fail and refuse to present themselves for registration and submit thereto; that there is no proof of any overt act to carry out the said conspiracy.

SIXTH: In denying the defendants' motion to set aside the verdict of the jury rendered against them, which motion presented to the trial court was as follows: That the verdict was contrary to the evidence, contrary to the law.

SEVENTH: In denying the defendants' motion for an arrest of judgment upon all the grounds hereinbefore set forth.

WHEREFORE, the said Louis Kramer and Morris Becker, plaintiffs-in-error; pray that the said judgment herein for the errors aforesaid and for the errors in the record and proceedings herein may be reversed and altogether held for nothing, and that their said trial should go for naught and that the said plaintiffs-in-error may be restored to all things which they have lost by reason of said judgment, and for such other and further relief as to the Court may seem proper.

Dated, July 17th, 1917.

HARRY WEINBERGER,

Attorney for Louis Kramer

and Morris Becker,

Office & P. O. Address,

261 Broadway,

Borough of Manhattan,

New York City.

KRAMER AND BECKER V. UNITED STATES.

Petition for Writ of Error.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Plaintiff,

against

LOUIS KRAMER and MORRIS
BECKER,
Defendants.

Petition for
Writ of Error.

Now comes the above defendants, Louis Kramer and Morris Becker, by their attorney, and complain that on the 13th day of June, 1917, the District Court of the United States for the Southern District of New York gave judgment in the above-entitled cause against the defendants, in which judgment in this cause certain errors were committed to the prejudice of these defendants.

FIRST: In respect to the Court's construction and application of the Constitution of the United States and its disposition of the merits of the cause, all of which will appear more in detail from the Assignment of Errors which is filed with this petition.

WHEREFORE, the said defendants, Louis Kramer and Morris Becker, pray for the allowance of a writ of error and for such other orders and processes as may cause all and singular the record and proceedings in said cause to be sent to the Honorable the Justices of the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and so that the same being inspected, the said Jus-

KRAMER AND BECKER V. UNITED STATES.

tices of the said Supreme Court of the United States cause further to be done therein to correct that error what of right and according to law ought to be done, and also that an order be made herein that all other proceedings in this action in this court be suspended and stayed until the determination of said Writ of Error by the said Supreme Court of the United States.

And your petitioners will ever pray, etc.

Dated this 17th day of July, 1917.

HARRY WEINBERGER,
Attorney for Defendants Louis
Kramer and Morris Becker,
Office & P. O. Address,
261 Broadway,
Borough of Manhattan,
City of New York.

SUPERSEDEAS.

Writ of Error, to operate as a Supersedeas, allowed, returnable, according to law, the defendants to furnish bail in the sum of Ten Thousand (\$10,000) Dollars each, conditioned according to law, subject to the approval of one of the Judges of the United States District Court for the Southern District of New York.

Dated, July 19th, 1917.

LOUIS D. BRANDEIS,
*Associate Justice of the United
States Supreme Court for
the Second Circuit.*

KRAMER AND BECKER V. UNITED STATES.

Citation.

UNITED STATES OF AMERICA, SS.:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein Louis Kramer and Morris Becker are plaintiffs-in-error and you are defendant-in-error, to show cause, if any there be, why the judgment rendered against the said plaintiffs-in-error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Louis D. Brandeis, Associate Justice of the Supreme Court of the United States, this 19th day of July, in the year of our Lord one thousand nine hundred and seventeen.

LOUIS D. BRANDEIS,
*Associate Justice of the
Supreme Court of the
United States.*

KRAMER AND BECKER V. UNITED STATES.

Stipulation.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

LOUIS KRAMER and MORRIS BECKER, Plaintiffs-in-Error, against UNITED STATES OF AMERICA, Defendant-in-Error.	}
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It is hereby stipulated and agreed that the record in the above-entitled case shall consist of the following papers now on file with the Clerk of the United States District Court for the Southern District of New York:

Writ of Error and order allowing same, dated July 19th, 1917.

Indictment, filed June 4th, 1917.

Bill of Exceptions, dated September 10th, 1917.

Assignment of Error, dated July 17th, 1917.

Petition for Writ of Error and supersedeas endorsed thereon, dated July 19th, 1917.

Citation, dated July 19th, 1917.

Stipulation Settling Record.

Certificate, dated September 12th, 1917.

Dated, New York, September 11th, 1917.

HARRY WEINBERGER,
Attorney for Plaintiffs-in-Error.

FRANCIS G. CAFFEY,
United States Attorney for the Southern District of New York,
Attorney for Defendant-in-Error.

KRAMER AND BECKER V. UNITED STATES.

Stipulation Settling Record.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

LOUIS KRAMER and MORRIS
BECKER,
Plaintiffs-in-Error,
against

UNITED STATES OF AMERICA,
Defendant-in-Error.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, September 11th, 1917.

HARRY WEINBERGER,
Attorney for Plaintiffs-in-Error.

FRANCIS G. CAFFEY,
United States Attorney for the Southern District of New York,
Attorney for Defendant-in-Error.

KRAMER AND BECKER V. UNITED STATES.

Clerk's Certificate.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

LOUIS KRAMER and MORRIS
BECKER,
Plaintiffs-in-Error,
against

UNITED STATES OF AMERICA,
Defendant-in-Error.

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof I have caused the seal of the said Court to be hereunto affixed, in the City of New York in the Southern District of New York, this 17th day of September, in the year one thousand nine hundred and seventeen.

(Seal)

ALEXANDER GILCHRIST, JR.,
Clerk.

U. S. Supreme Court, U. S.

Supreme Court of the United States

October Term, 1914

**LOUIS KRAMER and Mowbray
Buckley,**
Plaintiffs in Error,

No. 660.

against

THE UNITED STATES.

LOUIS KRAMER,
Plaintiff in Error,

No. 661.

against

THE UNITED STATES.

**BRIEF ON BEHALF OF THE
PLAINTIFFS IN ERROR.**

HARRY WEINBERGER,
Attorney for Plaintiffs in Error,
No. 201 Broadway,
Borough of Manhattan,
City of New York.

HARRY WEINBERGER,
of Counsel.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1917.

LOUIS KRAMER and MORRIS
BECKER,
Plaintiffs-in-Error,
against
THE UNITED STATES.

No. 680.

LOUIS KRAMER,
Plaintiff-in-Error,
against
THE UNITED STATES.

No. 681.

**BRIEF ON BEHALF OF THE
PLAINTIFFS-IN-ERROR.**

Statement.

The indictment charges the defendants Louis Kramer and Morris Becker, with Joseph Walker and Louis Sternberg, with conspiracy as accessories before the fact for violation of the Draft Act by

aiding, abetting, etc., male persons subject to registration to unlawfully and wilfully fail and refuse to register, in violation of Sections 37 and 332, U. S. C. C., and Section 5 of the Act of May, 1917 (see Indictment, pp. 2 to 7).

The plaintiff Louis Kramer, being subject to the Draft Act, is indicted for having failed and refused to register on June 5th, 1917, while in the Tombs prison awaiting trial on the charge of conspiracy mentioned above.

Plaintiff claims that the Act known as the Draft Act is unconstitutional, and therefore that there was no necessity of registering in compliance with it, and that therefore the indictment does not state a crime, and the fact of refusing to register does not prove a crime.

Assignments of Error.

These will be found *in extenso*, pages 268 to 272 inclusive of the transcript of record in the conspiracy case, and on pages 32 to 36 in the registration case.

POINT I.

No crime of conspiracy charged in the indictment.

See Point I, Goldman and Berkman against The United States, No. 702.

POINT II.

No evidence of defendants' guilt.

The following is a concise statement of all the facts as shown in the evidence:

Defendant Louis Kramer is alleged to have given out pamphlets to unknown persons entitled, "No Conscription," and did request an unknown person wilfully to fail and refuse to present himself for registration, and did also give a pamphlet and requested one James J. Finan (who is a detective and not of draft age—see p. 13), to fail and refuse to present himself for registration on June 5th.

Defendant Morris Becker is alleged to have had in his possession and distributed two different kinds of pamphlets entitled "No Conscription" to several unknown persons.

Defendant Joseph Walker, it is alleged, gave to divers persons unknown two different pamphlets entitled "No Conscription."

Defendant Louis Sternberg is alleged to have had in his possession two different kinds of pamphlets entitled "No Conscription."

The facts as testified to are, briefly, these:

Detective James J. Finan for the Government was at the mass meeting at Madison Square Garden on the 31st day of May, 1917, and saw the four defendants there (p. 13). He saw Kramer and Becker talking together about 10.30 P. M. Kramer had wide circulars on his arm and Becker had small ones. They gave them out to different people to distribute, among whom were Walker and Sternberg, on the next to the top balcony of Madison Square Garden (p. 15). Kramer then started to distribute his circulars and gave one to Finan, and that he said to Finan in answer to a question, "If

you will take our advice, you will stay away from the polls or the registration places. If everybody stays away there is not soldiers or police enough to make us go, but if some people go we will all have to go. If you stay away we will be right back of you" (p. 16). Finan did not arrest Kramer when he said this. But Kramer kept on giving out these pamphlets and gave some to Sergeant Silverman of the 8th Coast Artillery, who was in uniform, who arrested him, and after that Finan took him in custody (p. 18). Then another soldier came over with Walker under arrest (p. 20), who had also a bundle of pamphlets.

The two prisoners were taken downstairs and the soldiers went to look for others who were giving out the pamphlets, on the advice of Finan, who did not think of arresting Kramer in the first place, even when Kramer told him not to register, but as soon as the soldiers arrested Kramer for giving out the pamphlets, Finan said arrest them all.

Four or five minutes later they brought down Sternberg. Sternberg when brought down said to Walker, so Finan testified: "How much of the stuff did they find in your possession?" Walker said: "Why, they found all I had," and then he (Sternberg) said, "They found all I had." Then Walker said to Sternberg, "How much did they get on you?" or "What did they get on you?" and Sternberg said, "All they got on me was some of the pamphlets." (Perfect English slang. This slang will be important as the evidence is developed, for Sternberg, as it is finally proved, could not talk English at all.) The three prisoners were taken to the police court. Defendant Becker was brought in to the police court ten or fifteen minutes after the others. That Louis Sternberg at the police court said he was twenty-four years of age, born

in Russia, single, was a hatter and lived at 94 Rutgers Street (p. 24). He stated that Sternberg walked around the balcony with a bundle of pamphlets (p. 25).

Benjamin Silverman, attached to the 8th Coast Defense Command, U. S. National Guard, testified that he saw Kramer giving out circulars, large and small (p. 34), and that he told someone not to register in quite a long speech (p. 35), and that he sent Private Henry to arrest Walker, who was giving out circulars.

Silverman then stated that he heard Sternberg in broken English say, "How much of the stuff did they get on you?" etc., and that a little while later he heard Sternberg say to Walker, "Did they overhear the conversation of you instructing others not to register on Tuesday?" He (Walker) said, "There was detectives all over the house, they must have overheard us" (p. 39).

It will be noted that the alleged conversation was in English, and apparently if this and the other testimony of the Government's witnesses was true, there is no doubt that Sternberg and Walker were part and parcel of an agreement to tell people not to register. This is very important because of what happened at the end of the trial—Sternberg was acquitted by the Court, and Walker by the jury.

Silverman did not get the name of anyone that Kramer spoke to, or to whom he said "Don't register" (p. 47).

Other Government witnesses confirmed Finan's and Silverman's testimony as to Kramer and Walker, and some as to Sternberg's conversation in English or broken English.

James Henry arrested Becker for giving out the circulars, and that Becker said to him that he did not know what he was giving out (p. 54).

Lawrence Bevins, an enlisted man in the U. S. Navy, testified he saw pamphlets coming down from a balcony, but he could not see who did the dropping (p. 61), and that he saw pamphlets in the pocket of Sternberg, who was sitting in the balcony, and arrested him (p. 62).

After other witnesses testified in confirmation, the Government rested.

A motion was made to dismiss on behalf of the four defendants on the ground that no conspiracy had been proven; that the only testimony was that four men were giving out circulars, which is not a violation of law, and no proof of conspiracy, and that one of them stated "Don't register." The same motion was made as to the four individually. All motions denied and exception taken (pp. 86 and 87).

The defendants all testified. Becker that he gave out circulars advertising the meeting to be held at Hunt's Point Palace. He did not tell anyone not to register (beginning p. 87). He admitted that he was a member of the No-Conscription League, which was opposed to conscription (p. 90). That he was an anarchist and opposed to all government and all war, believing that government and wars are not necessary (pp. 97 to 97). He did not give out circulars, having had to check them (p. 109).

Joseph Walker, one of the defendants, was not a member of the No-Conscription League nor an anarchist (p. 113). He testified he did not give out any pamphlets; that he did not know Sternberg before the meetnig, and did not tell anyone not to register (p. 115), and that Sternberg did not talk to him in English or broken English at the time of his arrest (p. 116).

The Court would not allow the examination of the Assistant District Attorney to show that all

the witnesses who had testified against defendants, one evening while the trial was going on, had assaulted citizens and forced them to show registration cards, contrary to law and the Constitution, so as to affect their testimony, inasmuch as it would show if they did not respect the law and the Constitution, they would not hesitate in stretching their testimony. Nor would the Court allow legal argument to show its relevancy (pp. 125 to 130).

Louis Sternberg testified that he cannot talk English at all (p. 131). That he is not an anarchist and is not opposed to conscription, and that he registered. That he did not know the other defendants and that he got pamphlets in the gallery (p. 132). The alleged slang English never took place (p. 135). Sternberg testified where and who he worked for and for how long (p. 139). Witness after witness that have known him since he came to this country testified that Sternberg could not talk English (pp. 146, 152, 156, 157, 158, 160, 161, 163, 164, 165, 166). Other witnesses for the Government testified that he did talk some English, and some that he did not, but Sternberg was acquitted by order of the Court (p. 241).

So that the stretching of the evidence, the palpable frame-up is strongly apparent as far as the detectives and soldiers are concerned, in reference to Sternberg, even in the opinion of the Court, which directed his discharge.

Louis Kramer admitted that he was an anarchist and opposed to militarism, and that he had not registered and would refuse to (p. 177). That he gave out circulars, but that he did not tell anyone not to register, and had no agreement nor did he conspire with defendants or anyone else to tell people not to register.

The jury acquitted Walker, so that the evidence against him is branded as a frame-up by the jury. But the jury on the same evidence which connected together the four defendants did convict Becker and Kramer, the two anarchists, of conspiracy as accessory before the fact.

The examination of the proceedings in court, the expressed attitude of the Court, and the Court's examination of witnesses, and the continual helping out of the Assistant District Attorney, explains why the jury were swayed into convicting Kramer and Becker.

The Court would not adjourn the case at the close of the evidence for counsel's summing up or motions on the law, despite counsel's statement that he was "absolutely, physically tired" and his explanation why he was tired (p. 238), and that counsel had not had time to prepare the law or the summing up. The hour at the time was 3.30 P. M. The Court absolutely refused and said "that cases involving the so-called Registration Law" shall have preference, and the Court would not adjourn for the day. Counsel then stated, "I don't believe the rights of defendants should be prejudiced by the exhausted condition of the defendant's counsel or the excess speed, because there is no necessity of speed." "The Court: Your motion is denied. Have you any motions?" (p. 239). "Mr. Weinberger: May I respectfully have an exception on the ground of physical inability to proceed and the Court forcing me to finish the case to-night?" (p. 240; see also p. 241). The Court's attitude explains the verdict of conviction of two of the defendants despite the lack of evidence, more than pages of argument.

The jury while acquitting Walker and convicting Becker and Kramer, did so "with recommendation

to your Honor's clemency." The Court's *clemency* was the limit of the law for Kramer, "Two years and \$10,000 fine" in the United States Penitentiary at Atlanta; Becker to one year and eight months. This again is a mirror up to the Court's attitude.

The law applicable to this point is the Point II, *Goldman and Berkman v. United States*, No. 702.

POINT III.

The Draft Law is unconstitutional.

The law applicable to both cases is same as Point III, *Goldman and Berkman v. The United States*, No. 702.

POINT IV.

If Draft Law unconstitutional, there can be no conspiracy to violate it.

The law applicable same as Point IV, *Goldman and Berkman v. The United States*, No. 702.

CONCLUSION.

It is respectfully submitted that the decision of the court below should be reversed in both cases, and the Draft Act declared unconstitutional.

HARRY WEINBERGER,
Attorney for Plaintiffs-in-Error,
No. 261 Broadway,
Borough of Manhattan,
City of New York.

HARRY WEINBERGER,
of Counsel.

KRAMER ET AL. v. UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 680. Argued December 13, 14, 1917.—Decided January 14, 1918.

After an examination of the entire record, the court finds no merit in the contention that the case should have been withheld from the jury for want of evidence tending to show the accused guilty of the crime charged—a conspiracy (with overt acts) to violate the Selective Draft Law, by dissuading persons from registering.

As to other questions, the case is indistinguishable from *Goldman v. United States*, ante, 474, and is decided on the authority of that case and the *Selective Draft Law Cases*, ante, 366.

Affirmed.

THE case is stated in the opinion.

Mr. Harry Weinberger for plaintiffs in error.

The Solicitor General, with whom *Mr. Robert Szold* was on the brief, for the United States. See ante, 368.

Mr. Hannis Taylor and *Mr. Joseph E. Black*, by leave of court, filed a brief as *amici curiæ*.

Mr. Walter Nelles, by leave of court, filed a brief as *amicus curiæ*.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

In this case, as in No. 702, just previously decided, ante, 474, because of constitutional questions the case was brought here by direct writ of error, with the object of re-

478.

Opinion of the Court.

viewing and reversing a conviction and sentence under an indictment charging an unlawful conspiracy to induce persons, whose duty it was to register under the Selective Draft Law, not to perform that duty, and alleging overt acts done for the purpose of carrying out the illegal conspiracy. The defenses were substantially the same as those urged in the previous case and the assignments of error made at the time of the allowance of the writs were identical. In fact, at bar the propositions and arguments relied upon in the previous case were stated to be controlling in this. But, therefore, for the fact that there was different evidence in the two cases, the considerations which control the one control the other. No distinction, however, results from that difference, since we are of opinion in this case as we were in the other, after an examination of the entire record, that the contention that there was no evidence tending to show guilt, and hence the case should have been taken from the jury, is without merit.

As thus any conceivable distinction between the two cases is removed, it follows that for the reasons stated in the *Goldman Case*, ante, 474, just decided, and in the *Arver Case*, [*Selective Draft Law Cases*] ante, 366, as to the constitutional questions, the judgment below in this case must be and it is

Affirmed.